

CALIFORNIA INSTITUTE OF TECHNOLOGY JET PROPULSION LABORATORY

GENERAL PROVISIONS: TIME-AND-MATERIAL FOR CONSTRUCTION

CONTRACTSUBCONTRACT

GENERAL PROVISION TITLE	PAGE
AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION	5
AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES	8
ANTI-KICKBACK PROCEDURES	8
APPRENTICES AND TRAINEES	9
ASBESTOS NOTIFICATION	10
ASSIGNMENT, NOVATION AND TRANSFER	10
ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES	10
AUDITS AND RECORDS – NEGOTIATION	11
AUTHORITY OF JPL REPRESENTATIVES	12
AUTHORIZATION AND CONSENT	13
BADGES AND PASSES	13
BANKRUPTCY	13
BUY AMERICAN ACT - CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS	13
BUY AMERICAN ACT – SUPPLIES	18
CERTIFICATION OF ELIGIBILITY	18
CHANGES – LABOR-HOUR/TIME-AND-MATERIAL	18
CLEANING UP	19
COMPLIANCE WITH COPELAND ACT REQUIREMENTS	19
COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS	19
COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT	19
CROSS-WAIVERS OF LIABILITY FOR SPACE SHUTTLE SERVICES, NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES, AND FOR SPACE STATION ACTIVITIES	23
DATA REMOVAL FROM COMPUTERS	27
DAVIS-BACON ACT	27
DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS	29
DEFINITIONS	29
DISPUTES CONCERNING LABOR STANDARDS	32
DRUG-FREE WORKPLACE REQUIREMENTS	33
ELECTRICAL EQUIPMENT ACQUISITION	33
EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	33
ENVIRONMENTAL COMPLIANCE	33
EQUAL OPPORTUNITY	34
EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	34
EQUIPMENT (EXCLUDING VEHICLES), TOOLS AND MATERIAL (SUBCONTRACTOR PERSONNEL IN RESIDENCE AT JPL)	34
EXCUSABLE DELAYS	35
EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING	35
EXPORT LICENSES	36
FACSIMILE COPIES ACCEPTABLE	36
FEDERAL, STATE, AND LOCAL TAXES	37
FELONY CONVICTION INFORMATION (SUBCONTRACTOR PERSONNEL IN RESIDENCE AT JPL)	37
FIRST-TIER SUBCONTRACTS	37
FIRST-TIER SUBCONTRACTS - LABOR STANDARDS	37
FIRST-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS	37
GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM	38
GOVERNMENT PROPERTY	38
HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA	39
INJURY AND ILLNESS PREVENTION PROGRAM	39
INSPECTION – TIME AND MATERIAL AND LABOR HOUR	39
INSURANCE AND INDEMNIFICATION	41
INTEGRITY OF UNIT PRICES	42
LIMITATION OF LIABILITY	42
LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	45
LIMITATION ON WITHHOLDING OF PAYMENTS	45
MATERIAL AND WORKMANSHIP	45
MATERIAL REQUIREMENTS	45
NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	46
NOTICE OF BUY AMERICAN ACT REQUIREMENT – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS	46
NOTICE OF RADIOACTIVE MATERIALS	47
NOTICE TO JPL OF LABOR DISPUTES	47
NOTIFICATION OF OWNERSHIP CHANGES	48
ORDER OF PRECEDENCE	48
OTHER SUBCONTRACTS	48

PAYROLLS AND BASIC RECORDS.....	49
PERMITS AND RESPONSIBILITIES.....	50
PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS.....	50
PREFERENCE FOR U.S.-FLAG AIR CARRIERS.....	51
PRINTING AND DUPLICATING.....	51
PROHIBITION OF SUBCONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN SUBCONTRACT PERFORMANCE.....	52
PROHIBITION OF SEGREGATED FACILITIES.....	52
PROTECTION OF EXISTING VEGETATION, STRUCTURES, MATERIALS, IMPROVEMENTS, UTILITIES, AND WORK IN PROGRESS.....	52
RELEASE OF INFORMATION.....	53
REMOVAL OR REPLACEMENT OF PERSONNEL.....	53
REQUIRED NOTICES.....	53
RESTRICTIONS ON CERTAIN FOREIGN PURCHASES.....	53
RESTRICTIONS ON FIRST-TIER SUBCONTRACTOR SALES.....	53
RIGHTS IN DATA – GENERAL.....	53
RIGHTS IN TECHNICAL PROPOSAL DATA.....	59
SAFETY AND HEALTH – CONSTRUCTION.....	59
SELECTION OF PERSONNEL.....	61
SIGNS AND ADVERTISEMENTS.....	61
SMALL FIRST-TIER SUBCONTRACTING PLAN.....	62
SMALL BUSINESS FIRST-TIER SUBCONTRACTING REPORTING.....	62
SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION.....	62
SUBCONTRACT TERMINATION – DEBARMENT.....	63
SUBCONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION.....	63
SUBCONTRACTOR AND FIRST-TIER SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA.....	64
SUBCONTRACTOR EMPLOYMENT OF JPL EMPLOYEES' CHILDREN AND RELATIVES (SUBCONTRACTOR'S EMPLOYEES IN RESIDENCE AT JPL).....	66
SUBCONTRACTOR RECRUITING ACTIVITY.....	67
SUPERINTENDENCE BY THE SUBCONTRACTOR.....	68
SUSPENSION OF WORK.....	68
TECHNICAL DIRECTION.....	68
TEMPORARY UTILITIES AND UTILITY TIE-INS.....	69
TERMINATION – LABOR-HOUR/TIME-AND-MATERIAL.....	70
TIMEKEEPING AND PAYMENTS.....	72
TOXIC CHEMICAL RELEASE REPORTING.....	78
TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS.....	78
UNION DATA FOR ON-SITE SUBCONTRACTORS.....	79
USE OF RURAL AREA SMALL BUSINESSES.....	80
UTILIZATION OF SMALL BUSINESS CONCERNS.....	80
WARRANTY OF CONSTRUCTION.....	80
WITHHOLDING OF FUNDS.....	81
WORKING HOURS AND SPECIAL WORK DAYS.....	81
AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION.....	3
AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES.....	6
ANTI-KICKBACK PROCEDURES.....	6
APPRENTICES AND TRAINEES.....	7
ASBESTOS NOTIFICATION.....	8
ASSIGNMENT, NOVATION AND TRANSFER.....	8
ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES.....	8
AUDITS AND RECORDS – NEGOTIATION.....	9
AUTHORITY OF JPL REPRESENTATIVES.....	10
AUTHORIZATION AND CONSENT.....	10
BADGES AND PASSES.....	10
BANKRUPTCY.....	11
BUY AMERICAN ACT – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS.....	11
FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON.....	13
BUY AMERICAN ACT – SUPPLIES.....	13
CERTIFICATION OF ELIGIBILITY.....	13
CHANGES – LABOR-HOUR/TIME-AND-MATERIAL.....	13
CLEANING UP.....	14
COMPLIANCE WITH COPELAND ACT REQUIREMENTS.....	14
COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS.....	14
COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT.....	14
CONTRACT TERMINATION – DEBARMENT.....	14
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION.....	15
CONTRACTOR AND SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA.....	15
CONTRACTOR EMPLOYMENT OF JPL EMPLOYEES' CHILDREN AND RELATIVES (CONTRACTOR'S EMPLOYEES IN RESIDENCE AT JPL).....	18
CONTRACTOR RECRUITING ACTIVITY.....	18
CROSS-WAIVERS OF LIABILITY FOR SPACE SHUTTLE SERVICES, NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES, AND FOR SPACE STATION ACTIVITIES.....	18
DATA REMOVAL FROM COMPUTERS.....	22
DAVIS-BACON ACT.....	22
DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS.....	24
DEFINITIONS.....	24
DISPUTES CONCERNING LABOR STANDARDS.....	26

DRUG-FREE WORKPLACE REQUIREMENTS	26
ELECTRICAL EQUIPMENT ACQUISITION	26
EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	26
ENVIRONMENTAL COMPLIANCE	26
EQUAL OPPORTUNITY	27
EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	27
EQUIPMENT (EXCLUDING VEHICLES), TOOLS AND MATERIAL (CONTRACTOR PERSONNEL IN RESIDENCE AT JPL)	27
EXCUSABLE DELAYS	28
EXISTING COMMERCIAL COMPUTER SOFTWARE—LICENSING	28
EXPORT LICENSES	29
FACSIMILE COPIES ACCEPTABLE	29
FEDERAL, STATE, AND LOCAL TAXES	29
FELONY CONVICTION INFORMATION (CONTRACTOR PERSONNEL IN RESIDENCE AT JPL)	30
GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM	30
GOVERNMENT PROPERTY	30
HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA	30
INJURY AND ILLNESS PREVENTION PROGRAM	31
INSPECTION	31
INSURANCE AND INDEMNIFICATION	32
INTEGRITY OF UNIT PRICES	33
LIMITATION OF LIABILITY	33
LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	36
LIMITATION ON WITHHOLDING OF PAYMENTS	36
MATERIAL AND WORKMANSHIP	36
MATERIAL REQUIREMENTS	36
NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	37
NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS	37
NOTICE OF RADIOACTIVE MATERIALS	38
NOTICE TO JPL OF LABOR DISPUTES	38
NOTIFICATION OF OWNERSHIP CHANGES	39
ORDER OF PRECEDENCE	39
OTHER CONTRACTS	39
PAYROLLS AND BASIC RECORDS	40
PERMITS AND RESPONSIBILITIES	41
PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS	41
PREFERENCE FOR U.S. FLAG AIR CARRIERS	42
PRINTING AND DUPLICATING	42
PROHIBITION OF CONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN CONTRACT PERFORMANCE	42
PROHIBITION OF SEGREGATED FACILITIES	43
PROTECTION OF EXISTING VEGETATION, STRUCTURES, MATERIALS, IMPROVEMENTS, UTILITIES, AND WORK IN PROGRESS	43
RELEASE OF INFORMATION	43
REMOVAL OR REPLACEMENT OF PERSONNEL	43
REQUIRED NOTICES	44
RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	44
RESTRICTIONS ON SUBCONTRACTOR SALES	44
RIGHTS IN DATA—GENERAL	44
RIGHTS IN TECHNICAL PROPOSAL DATA	49
SAFETY AND HEALTH—CONSTRUCTION	49
SELECTION OF PERSONNEL	52
SIGNS AND ADVERTISEMENTS	52
SMALL SUBCONTRACTING PLAN	52
SMALL BUSINESS SUBCONTRACTING REPORTING	52
SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION	52
SUBCONTRACTS	53
SUBCONTRACTS—LABOR STANDARDS	53
SUBCONTRACTS FOR COMMERCIAL ITEMS	54
SUPERINTENDENCE BY THE CONTRACTOR	54
SUSPENSION OF WORK	54
TECHNICAL DIRECTION	55
TEMPORARY UTILITIES AND UTILITY TIE-INS	55
TERMINATION—LABOR HOUR/TIME AND MATERIAL	56
TIMEKEEPING AND PAYMENTS	58
TOXIC CHEMICAL RELEASE REPORTING	61
TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS	61
UNION DATA FOR ON-SITE CONTRACTORS	62
USE OF RURAL AREA SMALL BUSINESSES	63
UTILIZATION OF SMALL BUSINESS CONCERNS	63
WARRANTY OF CONSTRUCTION	63
WITHHOLDING OF FUNDS	64
WORKING HOURS AND SPECIAL WORK DAYS	64

GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL

The following attachments are incorporated into the General Provisions. Submission of an offer and beginning performance constitute certification and recertification per Form JPL 2892.

Minimum Timekeeping Requirements for Time-and-Material or Labor-Hour Type Procurements to be Performed at Off-Lab Facilities, Form JPL 1725

Release of Information, Form JPL 1737

Affiliate Access Report, Form JPL 1943

Notification to Prospective ~~Contract~~Subcontractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385

Certifications, Form JPL 2892

Asbestos Notification, Form JPL 2895

Notice of Potential Tax Withholding

AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION

[T&MC, FPC – ~~10/0309/04~~–~~F~~] [FAR 52.222-27 - 02/99]

(The provisions of this Article shall be applicable only if the amount of this ~~Contract~~Subcontract exceeds \$10,000. Work performed outside the United States by employees recruited outside the United States is exempt from the requirements of this Article.)

(a) Definitions.

- (1) "Covered area," as used in this Article, means the geographical area described in the solicitation for this ~~Contract~~Subcontract.
- (2) "Director," as used in this Article, means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.
- (3) "Employer identification number," as used in this Article, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
- (4) "Minority," as used in this Article, means:
 - (A) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
 - (B) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
 - (C) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
 - (D) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central, or South American, or other Spanish culture or origin, regardless of race).

- (b) If the ~~Contract~~Subcontractor, or a ~~subcontractor~~First-tier Subcontractor at any tier, ~~First-tier S~~ubcontracts a portion of the work involving any construction trade, each such ~~First-tier S~~ubcontract in excess of \$10,000 shall include this Article and the Notice containing the goals for minority and female participation stated in the solicitation for this ~~Contract~~Subcontract.
- (c) If the ~~Contract~~Subcontractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. ~~Contract~~Subcontractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each ~~Contract~~Subcontractor or ~~First-tier S~~ubcontractor participating in an approved plan is also required to comply with its obligations under the "Equal Opportunity" Article, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other ~~Contract~~Subcontractors or ~~First-tier S~~ubcontractors toward a goal in an approved plan does not excuse any ~~Contract~~Subcontractor's or ~~First-tier S~~ubcontractor's failure to make good-faith efforts to achieve the plan's goals.
- (d) The ~~Contract~~Subcontractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this Article. The goals stated in the solicitation for this ~~Contract~~Subcontract are expressed as percentages of the total hours of employment and training of minority and female utilization that the ~~Contract~~Subcontractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the ~~Contract~~Subcontractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The ~~Contract~~Subcontractor is expected to make substantially uniform progress toward its goals in each craft.
- (e) Neither the terms nor conditions of any collective bargaining agreement, nor the failure by a union with which the ~~Contract~~Subcontractor has a collective bargaining agreement, to refer minorities or women shall excuse the ~~Contract~~Subcontractor's obligations under this Article, Executive Order 11246, as amended, or the regulations there under.
- (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the ~~Contract~~Subcontractor during the training period, and the ~~Contract~~Subcontractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

- (g) The ~~Contract~~Subcontractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the ~~Contract~~Subcontractor's compliance with this Article shall be based upon its effort to achieve maximum results from its actions. The ~~Contract~~Subcontractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
- (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the ~~Contract~~Subcontractor's employees are assigned to work. The ~~Contract~~Subcontractor, if possible, will assign two or more women to each construction project. The ~~Contract~~Subcontractor shall ensure that foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the ~~Contract~~Subcontractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
 - (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the ~~Contract~~Subcontractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off- the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the ~~Contract~~Subcontractor by the union or, if referred back, not employed by the ~~Contract~~Subcontractor, this shall be documented in the file, along with whatever additional actions the ~~Contract~~Subcontractor may have taken.
 - (4) Immediately notify the Director when the union or unions with which the ~~Contract~~Subcontractor has a collective bargaining agreement has not referred back to the ~~Contract~~Subcontractor a minority or woman sent by the ~~Contract~~Subcontractor, or when the ~~Contract~~Subcontractor has other information that the union referral process has impeded the ~~Contract~~Subcontractor's efforts to meet its obligations.
 - (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the ~~Contract~~Subcontractor's employment needs, especially those programs funded or approved by the Department of Labor. The ~~Contract~~Subcontractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.
 - (6) Disseminate the ~~Contract~~Subcontractor's equal employment policy by:
 - (A) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the ~~Contract~~Subcontractor in meeting its ~~Contract~~Subcontract obligations;
 - (B) Including the policy in any policy manual and in collective bargaining agreements;
 - (C) Publicizing the policy in the company newspaper, annual report, etc.
 - (D) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
 - (E) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
 - (7) Review, at least annually, the ~~Contract~~Subcontractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - (8) Disseminate the ~~Contract~~Subcontractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other ~~contract~~Subcontractors and First-tier Subcontractors with which the ~~Contract~~Subcontractor does or anticipates doing business.
 - (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the ~~Contract~~Subcontractor's recruitment area and employment needs. Not later than one month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written

notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after- school, summer, and vacation employment to minority and female youth both on the site and in other areas of the ~~Contract~~Subcontractor's workforce.
 - (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
 - (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
 - (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the ~~Contract~~Subcontractor's obligations under this ~~Contract~~Subcontract are being carried out.
 - (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (15) Maintain a record of solicitations for First-tier Ssubcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the ~~Contract~~Subcontractor's equal employment policy and affirmative action obligations.
- (h) The ~~Contract~~Subcontractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the ~~Contract~~Subcontractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the ~~Contract~~Subcontractor:
- (1) Actively participates in the group;
 - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
 - (3) Ensures that concrete benefits of the program are reflected in the ~~Contract~~Subcontractor's minority and female workforce participation;
 - (4) Makes a good-faith effort to meet its individual goals and timetables; and
 - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the ~~Contract~~Subcontractor. The obligation to comply is the ~~Contract~~Subcontractor's, and failure of such a group to fulfill an obligation shall not be a defense for the ~~Contract~~Subcontractor's noncompliance.
- (i) A single goal for minorities and a separate single goal for women shall be established. The ~~Contract~~Subcontractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the ~~Contract~~Subcontractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
- (j) The ~~Contract~~Subcontractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (k) The ~~Contract~~Subcontractor shall not enter into any First-tier Ssubcontract with any person or firm debarred from Government ~~contract~~Subcontracts under Executive Order 11246, as amended.
- (l) The ~~Contract~~Subcontractor shall carry out such sanctions and penalties for violation of this Article and of the "Equal Opportunity" Article, including suspension, termination, and cancellation of existing First-tier Ssubcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this Article and Executive Order 11246, as amended.
- (m) The ~~Contract~~Subcontractor in fulfilling its obligations under this Article shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the ~~Contract~~Subcontractor fails to comply with the

requirements of Executive Order 11246, as amended, the implementing regulations, or this Article, the Director shall take action as prescribed in 41 CFR 60-4.8.

- (n) The ~~Contract~~Subcontractor shall designate a responsible official to:
 - (1) Monitor all employment-related activity to ensure that the ~~Contract~~Subcontractor's equal employment policy is being carried out;
 - (2) Submit reports as may be required by the Government; and
 - (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- (o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS WITH DISABILITIES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, ~~LH-T&M~~MLH/T&M, FPC, CREI, ~~A-EA - E - 8/04 10/0309/04~~-I] [FAR 52.222-36 - ~~4/84~~ 06/98]

(This Article applies to ~~contract~~Subcontracts ~~over \$2,500~~ that exceed \$10,000, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

~~**AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E - 4/09] [FAR 52.222-35 - 4/98]~~

~~(This Article applies to contracts over \$10,000, unless the work is performed outside the United States by employees recruited outside the United States.)~~

~~Incorporate by reference 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4242).~~

ANTI-KICKBACK PROCEDURES

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&M~~MLH/T&M, FPC, CREI, ~~A-EA - E, RSA - 10/0309/04~~-I] [FAR 52.203-7 - 07/95]

- (a) Definitions.
 - (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, ~~First-tier S~~Subcontractor, or ~~First-tier S~~Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a ~~First-tier S~~Subcontract relating to a prime contract.
 - (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
 - (3) "Prime contract," as used in this Article, means a ~~contract~~Subcontract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
 - (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
 - (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
 - (6) "~~First-tier S~~Subcontract," as used in this Article, means a ~~contract~~Subcontract or contractual action entered into by a prime Contractor or ~~First-tier S~~Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
 - (7) "~~First-tier S~~Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a ~~First-tier S~~Subcontract entered into in connection with such prime contract, and (ii) includes any

person who offers to furnish or furnishes general supplies to the prime contractor or a higher-tier ~~First-tier~~ ~~SSubcontractor~~.

(8) "~~First-tier~~ ~~SSubcontractor~~ employee," as used in this Article, means any officer, partner, employee, or agent of a ~~First-tier~~ ~~SSubcontractor~~.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the ~~ContractSubcontract~~ price charged by a prime Contractor to the United States or in the ~~ContractSubcontract~~ price charged by a ~~First-tier~~ ~~SSubcontractor~~ to a prime contractor or higher-tier subcontractor.

(c)

- (1) When the ~~ContractSubcontractor~~ has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the ~~ContractSubcontractor~~ shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (2) The ~~ContractSubcontractor~~ shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.
- (3) The Institute may (i) offset the amount of the kickback against any monies owed under the ~~ContractSubcontract~~ and/or (ii) direct that the ~~ContractSubcontractor~~ withhold, from sums owed a ~~First-tier~~ ~~SSubcontractor~~ under the ~~ContractSubcontract~~, the amount of any kickback. JPL may order that monies withheld under subdivision (c)(3)(ii) of this Article be paid over to JPL unless JPL has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the ~~ContractSubcontractor~~ shall notify JPL when the monies are withheld.
- (4) The ~~ContractSubcontractor~~ agrees to incorporate the substance of this Article, including this subparagraph (c)(4), in all ~~First-tier~~ ~~SSubcontracts~~ under this ~~ContractSubcontract~~.

APPRENTICES AND TRAINEES

[FPC, T&MC – ~~49/0309/04~~]-[F] [FAR 52.222-9 - 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the ~~ContractSubcontractor~~ as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a ~~ContractSubcontractor~~ is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the ~~ContractSubcontractor's~~ or ~~First-tier~~ ~~SSubcontractor's~~ registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of

an apprenticeship program, the ~~ContractSubcontractor~~ will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the ~~ContractSubcontractor~~ will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (c) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this Article shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

ASBESTOS NOTIFICATION

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&MLH/T&M~~, FPC, CREI, ~~A-EA - E - 40/0309/04~~]

(This Article applies if any of the ~~ContractSubcontract~~ effort will be performed in JPL-Pasadena buildings. Work performed outside the United States is exempt from the requirements of this Article.)

~~ContractSubcontractor~~ acknowledges receipt of the attached "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. ~~ContractSubcontractor~~ agrees to coordinate with the JPL Safety Operations Section for special asbestos handling instructions to be given to all ~~ContractSubcontractor's~~ personnel, including First-tier Ssubcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all First-tier Ssubcontracts issued under this Article for work performed in JPL-Pasadena buildings.

ASSIGNMENT, NOVATION AND TRANSFER

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&MLH/T&M~~, FPC, CREI, ~~A-EA - E, CIS, RSA - 40/0309/04~~]-~~FI~~ [FAR 52.244-2(m) - 08/98]

This ~~ContractSubcontract~~ may be assigned, novated, or transferred to a successor-in-interest, a successor ~~contractSubcontractor~~ to operate the Jet Propulsion Laboratory, or the Government.

ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&MLH/T&M~~, FPC, CREI, ~~A-EA - E - 40/0309/04~~]-~~FI~~ [FAR 52.232-23(a) - 01/86]

- (a) The ~~ContractSubcontractor~~ may assign its rights to be paid amounts due or to become due as a result of the performance of this ~~ContractSubcontract~~ to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
- (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this ~~ContractSubcontract~~, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
 - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this ~~ContractSubcontract~~.

- (3) Two copies of the notice of assignment, signed by the ~~ContractSubcontractor~~, shall be furnished to JPL, Attn: Accounts Payable.
- (4) If a party other than the ~~ContractSubcontractor~~ provides JPL with a notification that the amount due or to become due under this ~~ContractSubcontract~~ has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the ~~ContractSubcontract~~ until JPL is furnished with either (i) verification or denial of assignment from the ~~ContractSubcontractor~~ or (ii) reasonable proof that the assignment has been made.
- (5) The ~~ContractSubcontractor~~ shall not furnish or disclose to any assignee under this ~~ContractSubcontract~~ any classified document (which term includes this ~~ContractSubcontract~~ if access to classified material is authorized under this ~~ContractSubcontract~~) or information pertaining to classified work under this ~~ContractSubcontract~~ unless JPL authorizes such action in writing.
- (6) No assignment may be made which includes, either specifically or by implication, any delegation of the ~~ContractSubcontractor~~'s duty to perform the services or provide the supplies required by this ~~ContractSubcontract~~ unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.
- (c) The ~~ContractSubcontractor~~ ~~is~~ prohibited, without prior written JPL consent, from delegating any part of the duties required of it by this ~~ContractSubcontract~~; provided, however, that nothing contained herein shall be deemed to prohibit the ~~ContractSubcontractor~~ from placing purchase orders and ~~First-tier S~~subcontracts, subject, however, to the provision of this ~~ContractSubcontract~~ entitled "~~First-tier S~~subcontracts." Delegation of duties without such consent is void.

AUDITS AND EXAMINATION OF RECORDS – NEGOTIATION

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&MLH/T&M~~, FPC, CREI, ~~A-EA – E, RSA – 4/99 10/0309/04~~–~~FI~~] [FAR 52.215-2 –~~8/96~~ 06/99]

(This provision is not applicable for procurements of \$100,000 or less, for commercial items, or for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.)

- (a) As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable ~~ContractSubcontract~~, or any combination of these, the ~~ContractSubcontractor~~ shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this ~~ContractSubcontract~~. This right of examination shall include inspection at all reasonable times of the ~~ContractSubcontractor~~'s plants, or parts of them, engaged in performing the ~~ContractSubcontract~~.

If this is a facilities acquisition, the obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this ~~contractSubcontract~~.

- (c) Cost or Pricing Data. If the ~~ContractSubcontractor~~ has been required to submit cost or pricing data in connection with pricing action relating to this ~~ContractSubcontract~~, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the ~~ContractSubcontractor~~'s records, including computations and projections, related to:
 - (1) The proposal for the ~~ContractSubcontract~~, ~~First-tier S~~subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the ~~ContractSubcontract~~, ~~First-tier S~~subcontract, or modification; or
 - (4) Performance of the ~~ContractSubcontract~~, ~~First-tier S~~subcontract, or modification.
- (d) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the ~~ContractSubcontractor~~'s directly pertinent records involving transactions related to this ~~ContractSubcontract~~ or a ~~First-tier S~~subcontract hereunder.

(2) This paragraph (d) may not be construed to require the ~~ContractSubcontractor~~ or ~~First-tier S~~ubcontractor to create or maintain any record that the ~~ContractSubcontractor~~ or ~~First-tier S~~ubcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the ~~ContractSubcontractor~~ is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (i) the effectiveness of the ~~ContractSubcontractor~~'s policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.

(f) Availability. The ~~ContractSubcontractor~~ shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this Article, for examination, audit, or reproduction, until three years after final payment under this ~~ContractSubcontract~~, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR, and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Articles of this ~~ContractSubcontract~~. In addition:

(1) If this ~~ContractSubcontract~~ is completely or partially terminated, the ~~ContractSubcontractor~~ shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The ~~ContractSubcontractor~~ shall make available records relating to appeals under the "Disputes" Article or to litigation or the settlement of claims arising under or relating to this ~~contractSubcontract~~ until such appeals, litigation, or claims are finally resolved.

(3) If this ~~ContractSubcontract~~ is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and

(4) Records relating to appeals under the Disputes clause of the Government Prime Contract, or if this ~~ContractSubcontract~~ contains a "Disputes" Article, to appeals under such Article, or to litigation or the settlement of claims arising under or relating to this ~~ContractSubcontract~~, shall be made available until such appeals, litigation, or claims are finally resolved.

(g)

(1) The ~~ContractSubcontractor~~ shall insert all of the provisions of this Article, including this paragraph (g), in all ~~First-tier S~~ubcontracts under this ~~ContractSubcontract~~ that exceed \$100,000, and:

(A) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(B) For which cost or pricing data are required; or

(C) That requires the ~~First-tier S~~ubcontractor to furnish reports as discussed in paragraph (e) of this clause.

(2) The Article may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government Prime Contract.

If this is a cost-reimbursement ~~contractSubcontract~~ with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this ~~ContractSubcontract~~.

AUTHORITY OF JPL REPRESENTATIVES

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&MLH/T&M~~, FPC, CREI, ~~A-EA - E, RSA - 40/0309/04~~]

(a) No request, notice, authorization, direction or order received by the Contractor and issued either pursuant to a provision of this ~~ContractSubcontract~~, to a provision of any document incorporated in this ~~ContractSubcontract~~ by reference, or otherwise, shall be binding upon either the ~~ContractSubcontractor~~ or the Institute unless issued or ratified in writing by the JPL ~~Subcontract ManagerSubcontracts Manager~~, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them. Designations of authorized representatives shall define the scope and limitations of the authorized representatives' authorities.

(b) The ~~ContractSubcontractor~~ shall immediately notify, in writing, the JPL ~~Subcontract ManagerSubcontracts Manager~~, or the Manager, Acquisition Division, JPL, whenever a request, notice, authorization, direction, or order has been received from a representative of JPL other than the JPL ~~Subcontract ManagerSubcontracts Manager~~, or the Manager, Acquisition Division, JPL, which, but for the lack of authorization on the part of the issuing JPL

representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the ~~ContractSubcontract~~ amount or amount allotted to this ~~ContractSubcontract~~; or (iii) otherwise be the basis for assertion of a claim by the ~~ContractSubcontract~~ or under any provision of the ~~ContractSubcontract~~.

AUTHORIZATION AND CONSENT

[CT, FP-R&D, T&MC, ~~LH-T&MLH/T&M~~, CREI, ~~A-EA - E, RSA - 40/0309/04~~]-[I] [FAR 52.227-1 - 07/95, ALT I]

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the Prime Contract or any ~~First-tier S~~ubcontract at any tier.
- (b) The ~~ContractSubcontract~~ agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all ~~First-tier S~~ubcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$100,000); however, omission of this Article from any ~~First-tier S~~ubcontract, under or over \$100,000, does not affect this authorization and consent.

BADGES AND PASSES

[T&MC, FPC - ~~40/0309/04~~]

The ~~ContractSubcontract~~ is responsible for insuring that its personnel and ~~First-tier S~~ubcontractor personnel, performing work under this ~~ContractSubcontract~~ on Laboratory controlled premises, obtain from the JPL Security Group the required badges and passes, if any, authorizing admittance to the premises.

BANKRUPTCY

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&MLH/T&M~~, FPC, CREI, ~~A-EA - E - 40/0309/04~~]-[I] [FAR 52.242-13, 07/95]

In the event the ~~ContractSubcontract~~ enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the ~~ContractSubcontract~~ agrees to furnish, by certified mail or electronic commerce method authorized by the ~~ContractSubcontract~~, written notification of the bankruptcy to the JPL ~~Subcontract Manager~~Subcontracts Manager responsible for administering the ~~ContractSubcontract~~. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of JPL ~~contractSubcontract~~ numbers for all JPL ~~contractSubcontract~~s against which final payment has not been made. This obligation remains in effect until final payment under this ~~ContractSubcontract~~.

BUY AMERICAN ACT - CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS

[T&MC, FPC - ~~2/00-40/0309/04~~] [FAR 52.225-11 -07/02]

(If the Article entitled "Buy American Act-Supplies" exists in this ~~contractSubcontract~~, it is deleted and this Article is substituted therefore. Work performed outside the United States is exempt from the requirements of this Article.)

(a) Definitions.

- (1) "Components," as used in this Article, means an article, material, or supply incorporated directly into a construction material.
- (2) "Construction material," as used in this Article, means an article, material, or supply brought to the construction site by the ~~ContractSubcontractor~~ or First-tier Subcontractor for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as complete systems, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such-those systems are delivered to the construction site.
- (3) Cost of components" means:
 - (i) For components purchased by the ~~ContractSubcontractor~~, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (ii) For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus

allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

(4) "Designated country" means any of the following:

<u>Aruba</u>	<u>Equatorial Guinea</u>	<u>Kiribati</u>	<u>Sao Tome and Principe</u>
<u>Austria</u>	<u>Finland</u>	<u>Korea, Republic of</u>	<u>Sierra Leone</u>
<u>Bangladesh</u>	<u>France</u>	<u>Lesotho</u>	<u>Singapore</u>
<u>Benin</u>	<u>Gambia</u>	<u>Liechtenstein</u>	<u>Somalia</u>
<u>Bhutan</u>	<u>Germany</u>	<u>Luxembourg</u>	<u>Spain</u>
<u>Botswana</u>	<u>Greece</u>	<u>Malawi</u>	<u>Sweden</u>
<u>Burkina Faso</u>	<u>Guinea</u>	<u>Maldives</u>	<u>Switzerland</u>
<u>Burundi</u>	<u>Guinea -Bissau</u>	<u>Mali</u>	<u>Tanzania U.R.</u>
<u>Canada</u>	<u>Haiti</u>	<u>Mozambique</u>	<u>Togo</u>
<u>Cape Verde</u>	<u>Hong Kong</u>	<u>Nepal</u>	<u>Tuvalu</u>
<u>Central African Republic</u>	<u>Iceland</u>	<u>Netherlands</u>	<u>Uganda</u>
<u>Chad</u>	<u>Ireland</u>	<u>Niger</u>	<u>United Kingdom</u>
<u>Comoros</u>	<u>Israel</u>	<u>Norway</u>	<u>Vanuatu</u>
<u>Denmark</u>	<u>Italy</u>	<u>Portugal</u>	<u>Western Samoa</u>
<u>Djibouti</u>	<u>Japan</u>	<u>Rwanda</u>	<u>Yemen</u>

(4)(5) "Designated country construction material," as used in this Article, means a construction material that (i) Is wholly the growth, product, or manufacture of a designated country ~~(as defined at FAR25.003)~~; or (ii) In the case of a construction material ~~which~~ that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

(5)(6) "Domestic Construction material," as used in this Article, means (i) an unmanufactured construction material mined or produced in the United States, or (ii) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which Nonavailability determinations have been made are treated as domestic

(6)(7) "Foreign construction material" means a construction material other than a domestic construction material.

(7)(8) ~~"North American-Free Trade Agreement (NAFTA) country," as used in this Article, means Canada, Chile, or Mexico, or Singapore.~~

(8)(9) "NAFTA-Free Trade Agreement country construction material," as used in this Article, means a construction material that:

- (A) Is wholly the growth, product, or manufacture of a ~~NAFTA~~-Free Trade Agreement (FTA) country; or
- (B) In the case of a construction material ~~which~~ that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a ~~NAFTA~~ country into a new and different construction material distinct from the materials from which it was transformed.

(9)(10) "United States" means the 50 States and the District of Columbia, ~~U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands and any other place subject to U.S. jurisdiction, but do not include leased bases and its outlying areas.~~

(b) Construction Materials

- (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) ~~and the Balance of Payments Program~~ by providing a preference ~~of~~ for domestic construction material. In addition JPL's Contracting Officer has determined that the Trade Agreements Act and the ~~North American-Free Trade Agreement (NAFTA)~~ apply

to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

- (2) The ~~Contract~~Subcontractor shall use only domestic, designated country, or NAFTA country construction material- in performing this ~~contract~~Subcontract, except as provided in paragraphs (b)(3) and (b)(4) of this ~~clause~~Article.

- (3) The requirement in paragraph (b)(2) of this clause does not apply to the excepted construction material or components listed as follows:

(At this time, there are no excepted construction materials or components.)

- (4) Other foreign construction material may be added to the list in paragraph (b)(3) of this clause if the Government through JPL's Contracting Officer determines that:

- (A) The cost of domestic construction material would be unreasonable (the cost of a particular domestic construction material subject to the restrictions of the Buy American Act is when the cost of such material exceeds the cost of foreign material by more than 6 percent.
- (B) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or
- (C) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

- (c) Request for determination of inapplicability of the Buy American Act.

(1)

(i) Any ~~Contract~~Subcontractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including:

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Price;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any ~~Contract~~Subcontractor request for a determination submitted after ~~contract~~Subcontract award shall explain why the ~~Contract~~Subcontractor could not reasonably foresee the need for such determination and could not have requested the determination before ~~contract~~Subcontract award. If the ~~Contract~~Subcontractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

- (2) If the Government determines after ~~contract~~Subcontract award that an exception to the Buy American Act applies and ~~the~~ that adequate consideration has been negotiated, the ~~contract~~Subcontract will be modified to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(iA) of this clause.

- (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

- (d) ~~For To permit evaluation of requests under paragraph (c) of this Article based on unreasonable cost, the Subcontractor shall include the following information and any applicable supporting data based on the survey of suppliers' data shall be included in the request:~~

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars) ¹
Item 1:			
Foreign Construction Material:			
Domestic Construction Material:			
Item 2:			
Foreign Construction Material:			
Domestic Construction Material:			

Notes: 1. ~~Include~~ List all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

2. Provide name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

(e) United States law will apply to resolve any claim of breach of this Subcontract.

~~(If the Article entitled "Buy American Act-Supplies" exists in this contract, it is deleted and this Article is substituted therefor. Work performed outside the United States is exempt from the requirements of this Article.)~~

~~(a) Definitions.~~

- ~~(1) "Components," as used in this Article, means those articles, materials, and supplies incorporated directly into construction materials.~~
 - ~~(2) "Construction material," as used in this Article, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.~~
 - ~~(3) "Designated country construction material," as used in this Article, means a construction material that (i) Is wholly the growth, product, or manufacture of a designated country (as defined at FAR25.401); or (ii) In the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.~~
 - ~~(4) "Domestic Construction material," as used in this Article, means (i) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(2) of the Federal Acquisition Regulation (FAR) shall be treated as domestic~~
 - ~~(5) "North American Free Trade Agreement (NAFTA) country," as used in this Article, means Canada or Mexico.~~
 - ~~(6) "NAFTA country construction material," as used in this Article, means a construction material that:
(A) Is wholly the growth, product, or manufacture of a NAFTA country; or
(B) In the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.~~
- (b) ~~(1) This clause implements the Buy American Act (41 U.S.C. 10a ~ 10d) and the Balance of Payments Program by providing a preference of domestic construction material. In addition JPL's Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply~~

to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

~~(2) Only domestic, designated country, or NAFTA country construction material shall be used in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.~~

~~(3) The requirement in paragraph (b)(2) of this clause does not apply to the excepted construction material or components listed by the Government as follows:~~

~~(At this time, there are no excepted construction materials or components.)~~

~~(4) Other foreign construction material may be added to the list in paragraph (b)(2) of this clause if the Government through JPL's Contracting Officer determines that:~~

~~(A) The cost would be unreasonable (the cost of a particular domestic construction material subject to the restrictions of the Buy American Act shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determinations of unreasonable cost under the Balance of Payments Program, a factor of 50 percent shall be used;~~

~~(B) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or~~

~~(C) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.~~

~~(e) Request for determination.~~

~~(1) Contractors requesting to use foreign construction material under paragraph (b)(4) of this Article shall provide adequate information for Government evaluation of the request for a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (b)(4) of this Article. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this Article. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).~~

~~(2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in paragraph (b)(4)(i) of this Article.~~

~~(3) If the Government does not determine that an exception to the Buy American Act or Balance of Payments Program applies, the use of that particular foreign construction material shall be considered noncompliant with the Buy American Act or Balance of Payments Program.~~

~~(d) For evaluation of requests under paragraph (c) of this Article based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers shall be included in the request:~~

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

	<u>Construction Material Description</u>	<u>Unit of Measure</u>	<u>Price (Dollars)*</u>
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Item 1:

Foreign Construction Material:

Domestic Construction Material:

Item 2:

Foreign construction material:

Domestic construction material:

*[*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

Note: Provide name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

BUY AMERICAN ACT – SUPPLIES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, ~~LH-T&MLH/T&M~~, CREI – ~~4/99 10/0309/04~~–~~1~~] [FAR 52.225-~~3~~ ~~1~~ – ~~1/94~~ 05/02]

(This Article applies to supply ~~contractSubcontract~~s exceeding \$2,500 and to ~~contractSubcontract~~s for services which involve the furnishing of supplies when the supply portion of the ~~contractSubcontract~~ exceeds \$2,500.)

Incorporate by reference FAR 52.225-~~3~~ ~~1~~, Buy American Act - Supplies.

CERTIFICATION OF ELIGIBILITY

[T&MC, FPC – ~~40/0309/04~~] [FAR 52.222-15 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) By entering into this ~~ContractSubcontract~~, the ~~ContractSubcontract~~or certifies that neither it (nor he or she) nor any person or firm who has an interest in the ~~ContractSubcontract~~or's firm is a person or firm ineligible to be awarded Government ~~contractSubcontract~~s by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this ~~ContractSubcontract~~ shall be ~~First-tier S~~ubcontracted to any person or firm ineligible for award of a Government ~~contractSubcontract~~ by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

CHANGES – LABOR-HOUR/TIME-AND-MATERIAL

[~~LH-T&MLH/T&M~~, T&MC – ~~4/99 10/0309/04~~–~~1~~] [FAR 52.243-3 – ~~8/87~~ 09/00]

- (a) JPL may at any time, by written unilateral modification, and without notice to the sureties, if any, make changes or issue directions within the general scope of this ~~ContractSubcontract~~ in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for JPL in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
 - (7) Amount of GFP.
- (b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this ~~ContractSubcontract~~, whether or not changed by the modification, or otherwise affects any other provision of this ~~ContractSubcontract~~, JPL shall make an equitable adjustment in the (i) ceiling price, (ii) hourly rates, (iii) delivery or performance schedule, and (iv) other affected provisions, and shall modify the ~~ContractSubcontract~~ accordingly.
- (c) The ~~ContractSubcontract~~or must assert its right to an adjustment under this Article within 30 days from the date of receipt of the modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the ~~ContractSubcontract~~.
- (d) Except as provided in paragraph (e) below, nothing contained in this Article shall excuse the ~~ContractSubcontract~~or from proceeding with the ~~ContractSubcontract~~ as changed.
- (e) Notwithstanding the provisions of paragraphs (a) through (d) above, the ceiling price of this ~~ContractSubcontract~~ shall not be increased or deemed to be increased except by specific written modification of the ~~ContractSubcontract~~ indicating the new ~~ContractSubcontract~~ ceiling price. Until such modification is made, the ~~ContractSubcontract~~or shall not be obligated to continue performance or incur costs beyond the point established in paragraph (f) or (g) of the Article of this ~~ContractSubcontract~~ entitled "Timekeeping and Payments."

CLEAN AIR AND WATER [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – ~~8/01~~] [FAR 23.104 – ~~4/84~~; 52.223-~~2~~ ~~4/84~~]

~~(This Article does not apply to the use of facilities outside the United States. The Article applies to the Contract if it exceeds \$100,000 [or \$100,000 in one year for an indefinite delivery contract], or the facility to be used has been the~~

~~subject of a conviction under the Air Act or Water Act and is listed by the EPA as a violating facility, and the acquisition is not otherwise exempt under FAR 23.104.)~~

~~Incorporate by reference FAR 52.223-2, Clean Air and Water (April 1984).~~

CLEANING UP

[T&MC, FPC – ~~40/0309/04~~] [FAR 52.236-12 – 04/84]

The ~~ContractSubcontract~~ shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the ~~ContractSubcontract~~ shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the ~~ContractSubcontract~~ shall leave the work area in a clean, neat, and orderly condition satisfactory to JPL. Unless otherwise stated in this ~~ContractSubcontract~~, the time stated for completion of the work shall include cleaning-up time.

COMPLIANCE WITH COPELAND ACT REQUIREMENTS

[T&MC, FPC – ~~40/0309/04~~] [FAR 52.222-10 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

The ~~ContractSubcontract~~ shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this ~~ContractSubcontract~~.

COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS

[T&MC, FPC – ~~40/0309/04~~] [FAR 52.222-13 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are hereby incorporated by reference in this ~~ContractSubcontract~~.

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

[FP-NR&D, FP-R&D, ~~LH-T&MLH/T&M~~, T&MC, FPC, ~~A-EA-E~~ – ~~40/0309/04~~]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) ~~ContractSubcontract~~ agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.
- (b) ~~ContractSubcontract~~ agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefore, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph (a) above by the ~~ContractSubcontract~~ or any of its ~~First-tier S~~subcontractors, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Government or of the Institute, its trustees, officers, or employees.
- (c) ~~ContractSubcontract~~ agrees to insert this Article, including (c), in all ~~First-tier S~~subcontracts and purchase orders hereunder.

CONTRACT TERMINATION – DEBARMENT

[T&MC, FPC – ~~10/03~~]

~~(Work performed outside the United States is exempt from the requirements of this Article.)~~

~~A breach of the Contract Articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Subcontracts (Labor Standards)," "Compliance with Davis-Bacon and Related Act Regulations," or "Certification of Eligibility," may be grounds for termination of the Contract, and for debarment as a contractor as provided in 29 CFR 5.12.~~

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&M~~, FPC, CREI, ~~A-E~~ – ~~10/03~~] [FAR 22.305 – 07/95; 52.222-4 – 09/00]

~~(Work performed outside the United States is exempt from the requirements of this Article.)~~

~~(a) This provision is not applicable to contracts for supplies, materials, or articles ordinarily available in the open market, contracts for transportation by land, air, or water, or for the transmission of intelligence, contracts of~~

~~\$100,000 or less, contracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a state, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and Johnson Island, and contracts (or portions of contracts) for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics, exempt under regulations of the Secretary of Labor (29 CFR 5.15), contracts requiring work to be done solely in accordance with the Walsh-Healey Public Contract Act, and contracts for commercial items.~~

~~(a) FAR clause 52.222-4 (Sept 2000) is hereby incorporated by reference in total, except that:~~

~~(1) The words "JPL Subcontract Manager or JPL's Contracting Officer" shall be substituted for the words "Contracting Officer" wherever they appear;~~

~~(1) The word "Contractor" shall be substituted for the words "Prime Contractor" wherever they appear; and~~

~~(2) The words "with JPL" shall be substituted for the words "Federal Contract with the same Prime Contractor" wherever they appear.~~

~~CONTRACTOR AND SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA~~

~~[CT, FP NR&D, FP R&D, T&MC, LH T&M, FPC, A-E CREI-10/03] [FAR 15.403-4-10/00; 52.215-11-10/97; 52.215-12-10/97; 52.215-13-10/97; 52.215-20-10/97; 52.215-21-10/97]~~

~~(This Article is applicable if either the basic Contract or any modification exceeds \$550,000.)~~

~~(a) Contractor Cost or Pricing Data.~~

~~(1) Whenever the negotiated price of the basic Contract, or the negotiated price of any change, or other modification to this Contract is expected to exceed \$550,000, the Contractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the contract is for a commercial item). Whenever certified cost or pricing data are required, the Contractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.~~

~~(1) Exceptions to Cost or Pricing Data.~~

~~(A)~~

~~(i) Basic Contracts. In lieu of submitting cost or pricing data for the basic Contract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.~~

~~(ii) Contract Modifications. In lieu of submitting cost or pricing data for modifications under this Contract, for price adjustments expected to exceed \$550,000 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described under paragraph (B), below.~~

~~(iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.~~

~~(B) The relevant part of the following information is to be submitted when requesting an exception:~~

~~(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.~~

~~(ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:~~

~~a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price,~~

including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government contract, proof that an exception has been granted for the schedule item.

(iii) Information on modifications of contracts or subcontracts for commercial items. If (i) the original Contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a contract or subcontract for a commercial item; and (ii) the modification (to the Contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the Contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(C) The Offeror/Contractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's/Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Subcontractor Cost or Pricing Data.

(1) Before awarding any subcontract expected to exceed \$550,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$550,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the subcontract or modification is eligible for an exception listed in paragraph (a), above.

(1) The requirement for obtaining certified cost or pricing data with respect to any subcontract change or other modification does not apply to any subcontract change or modification, at any tier, where this Contract is a firm fixed-price or firm fixed-price with escalation contract unless such change or other modification results from a Contract change or other modification to this Contract, nor does it apply to a subcontract change or other modification, at any tier, where this Contract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Contract.

(2) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(3) In each subcontract that exceeds \$550,000 when entered into, the Contractor shall insert either:

(A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the subcontract; or

(B) The substance of the clause at FAR 52.215-13, "Subcontractor Cost or Pricing Data—Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

(1) If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant amount because (i) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction.

(1) Any reduction in the Contract price under paragraph (1) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus

~~applicable overhead and profit markup, by which (i) the actual subcontract or (ii) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.~~

~~(2)~~

~~(A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:~~

- ~~(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.~~
- ~~(ii) The Institute should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of JPL.~~
- ~~(iii) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract.~~

~~The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.~~

~~(B)~~

- ~~(i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Contract price reduction if:~~

~~a. The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and~~

~~b. The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.~~

- ~~(ii) An offset shall not be allowed if:~~

~~a. The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data or~~

~~b. The Government proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.~~

~~(d) If any reduction in the Contract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Contractor's defective pricing including:~~

~~(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and~~

~~(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.~~

CONTRACTOR EMPLOYMENT OF JPL EMPLOYEES' CHILDREN AND RELATIVES (CONTRACTOR'S EMPLOYEES IN RESIDENCE AT JPL)

~~[CT, FP-NR&D, FP-R&D, T&MC, LH-T&M—10/03]~~

~~(Work performed outside the United States is exempt from the requirements of this Article.)~~

~~(a) When work under this Contract is to be performed at any JPL-controlled facility, the Contractor agrees to require applicants for such work, as part of the application process, to identify any relatives they know to be employed at JPL. The Contractor also agrees to notify the cognizant Subcontract Manager prior to hiring an applicant who so identifies a relative. The Contractor agrees to abide by JPL's determination as to whether the applicant may be assigned to a particular JPL organization.~~

~~(a) The term "relatives" means parents, stepparents, grandparents, sisters, brothers, spouse/same-sex domestic partner, children, stepchildren, grandchildren, aunts, uncles, nieces, nephews, legal wards, and spouse's parents, grandparents, sisters and brothers.~~

CONTRACTOR RECRUITING ACTIVITY

~~[CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC—10/03]~~

~~(Work performed outside the United States is exempt from the requirements of this Article.)~~

~~Except as may be specifically authorized by JPL in writing, during the performance of this Contract the Contractor shall refrain from engaging in any activity related to employment recruiting on any of the premises of JPL.~~

CROSS-WAIVERS OF LIABILITY FOR SPACE SHUTTLE SERVICES, NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES, AND FOR SPACE STATION ACTIVITIES

~~[CT, FP-NR&D, FP-R&D, T&MC, LH-T&M/LH/T&M – 10/0309/04—11] NFS 1852.228-72 - 09/93; 1852.228-78 – 09/93; 1852.228-76 – 12/94]~~

(This Article is applicable if the ContractSubcontract value is \$100,000 or more.)

The ContractSubcontractor understands that the work performed under this ContractSubcontract may be in support of "Protected Space Operations" as defined in the three paragraphs (b)(5) under Part A, Part B, and Part C below, and therefore agrees to all three cross-waiver provisions set forth below. The ContractSubcontractor shall incorporate this Article into First-tier Subcontracts which that are for \$100,000 or more.

Part A. CROSS-WAIVER OF LIABILITY FOR SPACE SHUTTLE SERVICES

(a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving Space Shuttle services are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to contractSubcontractors and related entities under their contractSubcontracts. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this provision, the term:

(1) "ContractSubcontractors" and "First-tier Subcontractors" include suppliers of any kind.

(2) "Damage" means:

(A) Bodily injury to, or other impairment of health of, or death of, any person;

(B) Damage to, loss of, or loss of use of any property;

(C) Loss of revenue or profits; or

(D) Other direct, indirect, or consequential damage;

(3) "Party" means a person or entity that signs an agreement involving a Space Shuttle service;

(4) "Payload" means any property to be flown or used on or in the Space Shuttle; and

(5) "Protected Space Operations" means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle services or performed under this ContractSubcontract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this ContractSubcontract. It includes, but is not limited to:

(A) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) "Related entity" means:

(A) A party's contractSubcontractors or First-tier Subcontractors at any tier;

(B) A party's users or customers at any tier; or

(C) A ~~Contract~~Subcontractor or First-tier Ssubcontractor of a party's user or customer at any tier.

(c)

(1) The ~~Contract~~Subcontractor agrees to a waiver of liability pursuant to which the ~~Contract~~Subcontractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and ~~Contract~~Subcontract, against:

(A) Any party other than the Government;

(B) A related entity of any party other than the Government; and

(C) The employees of any of the entities identified in (c)(1)(A) and (c)(1)(B) above.

(2) The ~~Contract~~Subcontractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to First-tier Ssubcontractors at any tier by requiring them, by ~~Contract~~Subcontract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389), Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:

(A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the ~~Contract~~Subcontractor are included within this exception);

(B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(C) Claims for damage caused by willful misconduct; and

(D) Intellectual property claims.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

PART B. CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES

(a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving ELV launches are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to ~~Contract~~Subcontractors and First-tier Ssubcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this provision, the term:

(1) "~~Contract~~Subcontractors" and "First-tier Ssubcontractors" include suppliers of any kind.

(2) "Damage" means:

(A) Bodily injury to, or other impairment of health of, or death of, any person;

(B) Damage to, loss of, or loss of use of any property;

(C) Loss of revenue or profits; or

(D) Other direct, indirect, or consequential damage;

- (3) "Party" means a person or entity that signs an agreement involving an ELV launch;
 - (4) "Payload" means any property to be flown or used on or in the ELV; and
 - (5) "Protected Space Operations" means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving an ELV launch or performed under the ~~Contract~~Subcontract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for ELV-related activities necessary to implement an agreement involving an ELV launch or to perform the ~~contract~~Subcontract. It includes, but is not limited to:
 - (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of ELVs, transfer vehicles, payloads, related support equipment, and facilities and services;
 - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
 - (6) "Related entity" means:
 - (C) A party's ~~contract~~Subcontractors or First-tier Subcontractors at any tier;
 - (D) A party's users or customers at any tier; or
 - (E) A ~~contract~~Subcontractor or First-tier Subcontractor of a party's user or customer at any tier.
- (c)
- (1) The ~~Contract~~Subcontractor agrees to a waiver of liability pursuant to which the ~~Contract~~Subcontractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to a delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and ~~contract~~Subcontract, against:
 - (A) Any party other than the Government;
 - (B) A related entity of any party other than the Government; and
 - (C) The employees of any of the entities identified in (c)(1)(A) and (B) above.
 - (2) The ~~Contract~~Subcontractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to First-tier Subcontractors at any tier by requiring them, by ~~contract~~Subcontract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
 - (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.
 - (4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:
 - (A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the ~~Contract~~Subcontractor are included within this exception);
 - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
 - (C) Claims for damage caused by willful misconduct; and
 - (D) Intellectual property claims.
 - (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.
 - (6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

PART C. CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES

- (a) The Intergovernmental Agreement for Space Station Freedom contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this provision is to extend this cross-waiver requirement to ~~contract~~Subcontractors and ~~First-tier S~~ubcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
- (1) "Damage" means:
 - (A) Bodily injury to, or other impairment of health of, or death of, any person;
 - (B) Damage to, loss of, or loss of use of any property;
 - (C) Loss of revenue or profits; or
 - (D) Other direct, indirect, or consequential damage.
 - (2) "Launch Vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth ~~which-that~~ carries payloads or persons, or both.
 - (3) "Partner State" means each contracting party for which the "Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station" (the "Intergovernmental Agreement") has entered into force, in accordance with Article 25 of the Intergovernmental Agreement, and also includes any future signatories of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State. The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency (ESA), and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.
 - (4) "Payload" means any property to be flown or used on or in a launch vehicle or the Space Station.
 - (5) "Protected Space Operations" means all launch vehicle activities, space station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of the Intergovernmental Agreement or performed under this ~~Contract~~Subcontract. "Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process except when such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this ~~Contract~~Subcontract. It includes, but is not limited to:
 - (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, related support equipment, and facilities and services;
 - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
 - (6) "Related entity" means:
 - (A) A Partner State's ~~contract~~Subcontractors or ~~First-tier S~~ubcontracts at any tier;
 - (B) A Partner State's users or customers at any tier; or
 - (C) A ~~contract~~Subcontractor or ~~First-tier S~~ubcontractor of a Partner State's user or customer at any tier.
 - (7) "~~Contract~~Subcontractors" and "~~First-tier S~~ubcontractors" include suppliers of any kind.
- (c)
- (1) The ~~Contract~~Subcontractor agrees to a cross-waiver of liability pursuant to which the ~~Contract~~Subcontractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the

person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and ~~contract~~Subcontract against:

- (A) Any Partner State other than the United States;
 - (B) A related entity of any Partner State other than the United States; and
 - (C) The employees of any of the entities identified in paragraphs (c)(1)(A) and (B) above.
- (2) The ~~Contract~~Subcontractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to ~~First-tier S~~ubcontractors at any tier by requiring them, by ~~contract~~Subcontract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
- (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and Other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.
- (4) Notwithstanding the other provisions of this provision, this cross-waiver of liability shall not be applicable to:
- (A) Claims between the United States and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the ~~Contract~~Subcontractor are included within this exception);
 - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
 - (C) Claims for damage caused by willful misconduct; and
 - (D) Intellectual property claims.
- (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

DATA REMOVAL FROM COMPUTERS

[CT, FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC, FPC, CREI, A-EA – E, RSA – 40/0309/04] [NPG 2810]

~~The ContractSubcontractor shall erase or otherwise remove all completely overwrite or degauss the media containing data (which can include sensitive, Privacy Act, proprietary, and mission critical data) from hard drives and other computer storage devices and remove licensed software from Government-owned computers before such computers leave the control of the ContractSubcontractor organization by transfer or disposal. JPL data shall also be removed from ContractSubcontractor-owned computers when the computer will be no longer used for this ContractSubcontract. The ContractSubcontractor shall archive all data required to be retained, pursuant to the "Rights in Data - General" Article. Guidance on what constitutes mission-critical data and sensitive information (such as business and restricted technology information and scientific, engineering, and research information) is contained in NASA Procedure and Guidelines for Security of Information Technology (NPG) 2810, available on the worldwide web or from the JPL Subcontract ManagerSubcontracts Manager. Proprietary data consists of trade secrets and other commercial or financial information confidential to the individual owner or organization. Proprietary data is normally labeled as such. Trade secrets or commercial or financial information that has been released to the public or is otherwise in the possession of persons other than the individual owner or organization is in the public domain and may no longer be entitled to proprietary protection.~~

~~The ContractSubcontractor shall submit to JPL a written certification that all applicable media containing JPL data has been erased or otherwise removedoverwritten or degaussed from computers when returned to JPL or disposed of.~~

DAVIS-BACON ACT

[T&MC, FPC – 40/0309/04] [FAR 52.222-6 – 02/95]

(This Article applies if the amount of the ~~Contract~~Subcontract is in excess of \$2,000 for construction within the United States. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the ~~Contract~~Subcontractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this Article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the Article entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this Article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the ~~Contract~~Subcontractor and its ~~First-tier S~~ubcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b)
- (1) Except with respect to helpers, as defined in FAR 22.401, the Institute shall require that any class of laborers or mechanics, which is not listed in the wage determination and which is to be employed under the ~~Contract~~Subcontract shall be classified in conformance with the wage determination. The Institute shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:
 - (A) The work to be performed by the classification requested is not performed by a classification in the wage determination.
 - (B) The classification is utilized in the area by the construction industry.
 - (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (D) With respect to helpers, such a classification prevails in the area in which the work is performed.
 - (2) If the ~~Contract~~Subcontractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Institute agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Institute to the Contracting Officer for transmittal to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
 - (3) In the event the ~~Contract~~Subcontractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Institute do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Institute shall submit the question to the Contracting Officer, who shall refer for determination the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
 - (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this Article shall be paid to all workers performing in the classification under this ~~Contract~~Subcontract from the first day on which work is performed in the classification.
- (c) Whenever the minimum wage rate prescribed in the ~~Contract~~Subcontract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the ~~Contract~~Subcontractor shall either pay the

benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- (d) If the ~~Contract~~Subcontractor does not make payments to a trustee or other third person, the ~~Contract~~Subcontractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the ~~Contract~~Subcontractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the ~~Contract~~Subcontractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&MLH/T&M~~, FPC, CREI, ~~A-EA - E - 40/0309/04~~-~~I~~] [FAR 52.211-15 – 09/90]

Incorporate by reference FAR 52.211-15, Defense Priority and Allocation Requirements.

DEFINITIONS

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&MLH/T&M~~, FPC, ~~A-EA - E, RSA - 40/0309/04~~-~~I~~] [FAR 52.202-1 – 12/01]

As used throughout this ~~Contract~~Subcontract, the following terms shall have the meanings set forth below:

- (a) The term “Administrator” means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term “commercial component” means any component that is a commercial item.
- (c) The term “commercial item” means (see related term “nondevelopmental item,” below):
- (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes and that:
- (A) Has been sold, leased, or licensed to the general public; or
- (B) Has been offered for sale, lease, or license to the general public;
- (2) Any item that evolved from an item described in paragraph (c)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;
- (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (2) of this Article, but for:
- (A) Modifications of a type customarily available in the commercial marketplace; or
- (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. “Minor” modifications mean modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
- (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;
- (5) Installation services, maintenance services, repair services, training services, and other services if:
- (A) Such services are procured for support of an item referred to in paragraph (c)1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
- (B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services-

- (A) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or supplier, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
- (B) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
- (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a ~~Contract~~Subcontractor; or
- (8) A nondevelopmental item, if the procuring activity determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below).
- (d) The term "component" means any item supplied as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11 (a).
- (e) The term "~~contract~~Subcontract amount" means the ~~Contract~~Subcontract price, the estimated cost and fee, if any, or the ceiling price of the ~~Contract~~Subcontract.
- (f) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) The term "~~Contract~~Subcontractor" means the selling party to this ~~Contract~~Subcontract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "~~Contract~~Subcontractor" is the first tier First-tier Ssubcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
- (h)
 - (1) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this ~~Contract~~Subcontract, unless otherwise indicated.
 - (2) Any reference to the Contract Disputes Act is meant to refer to the Disputes provision in this ~~Contract~~Subcontract if any.
- (i) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (j) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (k) The term "Institute" means the California Institute of Technology as a party to this ~~Contract~~Subcontract.
- (l) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this ~~Contract~~Subcontract. The rights of JPL under this ~~Contract~~Subcontract are the rights of the California Institute of Technology as a party to this ~~Contract~~Subcontract.
- (m) The term "~~JPL Subcontract Manager~~Subcontracts Manager" means the individual authorized to issue and administer this ~~Contract~~Subcontract for JPL.
- (n) The term "NASA" means the National Aeronautics and Space Administration.
- (o) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Contract, unless otherwise indicated.
- (p) The term "nondevelopmental item" means:
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (p)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (p)(1) or (2) solely because the item is not yet in use.

- (q) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (r) The term "Prime Contract" means the ~~Contract~~Subcontract between the Institute and NASA for the United States of America (herein called the Government).
- (s) The term "Schedule" means the statements in the order/~~contract~~Subcontract, including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this ~~Contract~~Subcontract by reference or otherwise.
- (t) The term "First-tier Ssubcontract," as used in this ~~Contract~~Subcontract, includes, but is not limited to, purchase orders under this ~~Contract~~Subcontract.
- (u) The terms "United States" or "U.S." mean the United States of America.

~~As used throughout this Contract, the following terms shall have the meanings set forth below:~~

- ~~(a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration;~~
- ~~(b) The term "commercial component" means any component that is a commercial item;~~
- ~~(c) The term "commercial item" means (see related term "nondevelopmental item," below):~~
 - ~~(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that:~~
 - ~~(A) Has been sold, leased, or licensed to the general public; or~~
 - ~~(B) Has been offered for sale, lease, or license to the general public;~~
 - ~~(2) Any item that evolved from an item described in paragraph (c)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;~~
 - ~~(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (2) of this Article, but for:~~
 - ~~(A) Modifications of a type customarily available in the commercial marketplace; or~~
 - ~~(B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guidoposts, but are not conclusive evidence that a modification is minor;~~
 - ~~(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;~~
 - ~~(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this Article, and if the source of such services:~~
 - ~~(A) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and~~
 - ~~(B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;~~
 - ~~(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;~~
 - ~~(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or~~
 - ~~(8) A nondevelopmental item, if the procuring activity determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below);~~
- ~~(d) The term "component" means any item supplied as part of an end item or of another component.~~

- ~~(e) The term "contract amount" means the Contract price, the estimated cost and fee, if any, or the ceiling price of the Contract.~~
- ~~(f) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.~~
- ~~(g) The term "Contractor" means the selling party to this Contract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Contractor" is the first tier subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.~~
- ~~(h) (1) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Contract, unless otherwise indicated.~~
 - ~~(2) Any reference to the Contract Disputes Act is meant to refer to the Disputes provision in this Contract if any.~~
- ~~(i) The term "Government" means the Government of the United States of America, unless the context is otherwise.~~
- ~~(j) The term "Government furnished property (GFP)" includes JPL furnished, Government-owned property.~~
- ~~(k) The term "Institute" means the California Institute of Technology as a party to this Contract.~~
- ~~(l) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. The rights of JPL under this Contract are the rights of the California Institute of Technology as a party to this Contract.~~
- ~~(m) The term "JPL negotiator" means the individual authorized to issue and administer this Contract for JPL.~~
- ~~(n) The term "NASA" means the National Aeronautics and Space Administration.~~
- ~~(o) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Contract, unless otherwise indicated.~~
- ~~(p) The term "nondevelopmental item" means:~~
 - ~~(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;~~
 - ~~(2) Any item described in paragraph (p)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or~~
 - ~~(3) Any item of supply being produced that does not meet the requirements of paragraph (p)(1) or (2) solely because the item is not yet in use.~~
- ~~(q) The term "person" means any individual, partnership, corporation, association, institution or other entity.~~
- ~~(r) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government);.~~
- ~~(s) The term "Schedule" means the statements in the order/contract, including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.~~
- ~~(t) The term "subcontract," as used in this Contract, includes, but is not limited to, purchase orders under this Contract.~~
- ~~(u) The terms "United States" or "U.S." mean the United States of America.~~

DISPUTES CONCERNING LABOR STANDARDS

[T&MC, FPC – ~~40/0309/04~~] [FAR 52.222-14 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Disputes arising out of the labor standards provisions of this ~~Contract~~Subcontract shall be resolved in accordance with those procedures. Disputes within the meaning of this Article include disputes between the ~~Contract~~Subcontractor (or any of its ~~First-tier S~~Subcontractors) and the Institute, the National Aeronautics and Space Administration, the U.S. Department of Labor, or the employees or their representatives.

DRUG-FREE WORKPLACE REQUIREMENTS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, ~~LH-T&M~~~~LH/T&M~~, FPC, CREI, ~~A-EA - E - 4/99 10/0309/04~~ - ~~F~~] [FAR 52.223-6 - ~~4/97~~ 05/01]

~~The ContractSubcontractor agrees to inform all ContractSubcontractor personnel who work at JPL or are involved with any JPL activity on or off JPL premises that they are required to comply with the JPL "Drug Free Workplace Policy." The ContractSubcontractor further agrees to inform all ContractSubcontractor personnel, working at JPL or involved with any JPL activity on or off JPL premises that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that ContractSubcontractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.~~

~~The Contractor agrees to inform all Contractor personnel, prior to their first entrance upon JPL premises, that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Contractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.~~

ELECTRICAL EQUIPMENT ACQUISITION

[CT, FP-NR&D, FP-R&D, CIS, T&MC, ~~LH-T&M~~~~LH/T&M~~, FPC, CREI - ~~10/0309/04~~]

(This Article is applicable if the ~~ContractSubcontract~~ involves acquisition of off-the-shelf electrical equipment for delivery to or use by JPL or its designees.)

The electrical equipment being provided by the ~~ContractSubcontractor~~ under this ~~ContractSubcontract~~ shall be listed by Underwriters Laboratory, Factory Mutual Insurance Association, Canadian Standards Association, or similar organization of recognized standing. In the event that the equipment does not carry an appropriate approval, the individual components making up the item must be listed. Proof of listing shall be provided with delivery of the equipment in the form of accompanying data or labels. Any item not conforming to these requirements may be returned to the ~~ContractSubcontractor~~ at the ~~ContractSubcontractor's~~ expense. The ~~ContractSubcontractor~~ agrees to require ~~First-tier S~~subcontractors, if any, which supply electrical equipment for delivery to or use by JPL or its designees to comply with this Article.

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&M~~~~LH/T&M~~, FPC, CREI, ~~A-EA - E, RSA, CIS - 4/99 10/0309/04~~ - ~~F~~] [FAR 52.222-37 - ~~4/88~~ 12/01]

(This Article is applicable to this ~~ContractSubcontract~~ (and any ~~First-tier S~~subcontract) when the Article at 52.22-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans is applicable.)

Incorporate by reference FAR 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

~~(This Article is applicable if this Contract (and any subcontract) is for \$10,000 or more, unless exempted by rules, regulations, or orders of the Secretary of Labor.)~~

~~Incorporate by reference FAR 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.~~

ENVIRONMENTAL COMPLIANCE

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&M~~~~LH/T&M~~, FPC, CREI, ~~A-EA - E - 4/99 10/0309/04~~ - ~~F~~] [FAR 52.223-11 - ~~6/96~~ 05/01; 52.223-12 - 05/95]

(This Article is applicable to all ~~contractSubcontracts~~ to be performed at least partially within the United States, its possessions, and Puerto Rico.)

(a) Environmental Compliance. Environmental controls shall be in accordance with all applicable Federal, State and local regulatory requirements and in accordance with all applicable Executive Orders of the President. In addition the ~~contractSubcontractor~~ shall comply with the provisions set forth below.

(b) The ~~ContractSubcontractor~~ shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C.7671g and 7671h) as each or both apply to this ~~contractSubcontract~~.

(c)

(1) Definition. "Ozone-depleting substance", as used in this clause, means any substance the Environmental Protection Agency (EPA) designates in 40 CFR Part 82 as: (i) Class I, including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (ii) Class II, including, but not limited to, hydrochlorofluorocarbons.

Definition. "Ozone-depleting substance," as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.

- (2) The ~~Contract~~Subcontractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) (*)_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

(* The ~~Contract~~Subcontractor shall insert the name of the substance(s))

EQUAL OPPORTUNITY

[CT, FP-NR&D, FP-R&D, CIS, T&MC, ~~LH-T&MLH/T&M~~, FPC, CREI, ~~A-EA - E, RSA - 8/01 10/0309/04~~] [FAR 52.222-26 - 4/84 04/02]

(The following Article is applicable unless this ~~Contract~~Subcontract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside the United States by employees—~~recruited outside who were not recruited within~~ the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this ~~Contract~~Subcontract], the ~~Contract~~Subcontractor has been or is awarded nonexempt Federal ~~contract~~Subcontracts and/or First-tier Subcontracts that have an aggregate value in excess of \$10,000, the ~~Contract~~Subcontractor shall comply with FAR 52.222-26 during performance of this ~~Contract~~Subcontract. Upon request, the ~~Contract~~Subcontractor shall provide information necessary to determine the applicability of this Article.)
Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, ~~LH-T&MLH/T&M~~, FPC, CREI, ~~A-EA - E - 40/0309/04~~] [FAR 52.222-35 - 12/01]

(This Article applies to ~~contract~~Subcontracts of \$25,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

EQUIPMENT (EXCLUDING VEHICLES), TOOLS AND MATERIAL (~~CONTRACT~~SUBCONTRACTOR PERSONNEL IN RESIDENCE AT JPL)

[CT, ~~LH-T&MLH/T&M~~, T&MC - 40/0309/04]

(This Article applies if the ~~Contract~~Subcontract work will be performed at a JPL-controlled facility, and tools, equipment, or materials will be issued to the ~~Contract~~Subcontractor's personnel by JPL.)

- (a) ~~Contract~~Subcontractor personnel will not bring work Items, i.e., tools, equipment (for example, personal computers and printers), or material, upon the premises while working at a JPL-controlled facility. JPL will provide those Items necessary for performance of work at a JPL-controlled facility, and such Items shall not be removed from the premises unless removal from JPL premises is specifically authorized by the JPL Supply and Equipment Section Manager or designated representative. Items so provided shall not be considered "Government-Furnished Property," and will not be subject to the "Government Property" Article of this ~~Contract~~Subcontract, but will be issued to individual ~~Contract~~Subcontractor personnel. ~~Contract~~Subcontractor personnel will be held to the same standards of conduct regarding such Items as JPL employees, that is:

- (1) ~~Contract~~Subcontractor personnel shall promptly notify their supervisor or the Cognizant JPL Technical Representative of any loss, damage, or destruction of Items issued to them.
- (2) The ~~Contract~~Subcontractor will be held liable for any loss, damage, or destruction of such Items resulting from gross negligence, willful misconduct, and unlawful appropriation by its personnel for personal use or benefit, or use for other than JPL business on the part of its personnel.

- (b) The ~~Contract~~Subcontractor agrees to inform its personnel who may work at a JPL- controlled facility of this procedure and of their responsibilities. JPL will advise the ~~Contract~~Subcontractor promptly upon determining that

any ~~ContractSubcontract~~ or personnel have failed to return or satisfactorily account for any Item issued to such personnel. The ~~ContractSubcontract~~ agrees that JPL may withhold from any monies due or to become due the ~~ContractSubcontract~~ under this ~~ContractSubcontract~~, or to otherwise reimburse JPL, the value of any Items issued to ~~ContractSubcontract~~ personnel and neither returned nor satisfactorily accounted for upon completion of work under this ~~ContractSubcontract~~ or when so requested by JPL.

EXCUSABLE DELAYS

[CT, ~~LH-T&MLH/T&M~~, T&MC – 40/0309/04] [FAR 52.249-14 – 04/84]

- (a) Except for defaults of ~~First-tier S~~ubcontractors at any tier, the ~~ContractSubcontract~~ shall not be in default because of any failure to perform this ~~ContractSubcontract~~ under its terms if the failure arises from causes beyond the control and without the fault or negligence of the ~~ContractSubcontract~~. Examples of these are (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine restrictions, (vii) strikes, (viii) freight embargoes, and (ix) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the ~~ContractSubcontract~~. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a ~~First-tier S~~ubcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the ~~ContractSubcontract~~ and ~~First-tier S~~ubcontractor, and without the fault or negligence of either, the ~~ContractSubcontract~~ shall not be deemed to be in default, unless:
 - (1) The ~~First-tier S~~ubcontracted supplies or services were obtainable from other sources;
 - (2) JPL ordered the ~~ContractSubcontract~~ in writing to purchase these supplies or services from the other source; and
 - (3) The ~~ContractSubcontract~~ failed to comply reasonably with this order.
- (c) Upon request of the ~~ContractSubcontract~~, JPL shall ascertain the facts and extent of the failure. If JPL determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Institute under the "Termination" Article of this ~~ContractSubcontract~~.

EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING

[CT, FP-NR&D, FP-R&D, CIS, T&MC, ~~LH-T&MLH/T&M~~, CREI – 40/0309/04] [NFS 1852.227-86 – 12/87]

(This Article is applicable to the acquisition of any existing commercial computer software under this ~~ContractSubcontract~~.)

- (a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) below. Where the Supplier/~~ContractSubcontract~~ proposes its standard commercial software license, only those applicable portions thereof which comply with the other provisions of this ~~ContractSubcontract~~, Federal laws, FAR and NFS, including the restricted rights in paragraph (d) below, are incorporated into and made a part of this Purchase Order/~~ContractSubcontract~~.
- (b) Although the Supplier/~~ContractSubcontract~~ might not propose its standard commercial software license until after this Purchase Order/~~ContractSubcontract~~ has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this Purchase Order/~~ContractSubcontract~~ under the same terms and conditions as in paragraph (a) above. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Supplier/~~ContractSubcontract~~; however, such signing shall not add to or alter any of the terms and conditions of this Article or the Purchase Order/~~ContractSubcontract~~ into which this Article is incorporated.
- (c) The Supplier's/~~ContractSubcontract~~'s acceptance is expressly limited to the terms and conditions of this Purchase Order/~~ContractSubcontract~~. If the specified computer software is shipped or delivered to JPL or NASA, it shall be understood that the Supplier/~~ContractSubcontract~~ has unconditionally accepted the terms and conditions set forth in this Article, and that the terms and conditions of this Purchase Order/~~ContractSubcontract~~ (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.
- (d) The following restricted rights shall apply:

- (1) The commercial computer software may not be used, reproduced, or disclosed by the Institute or the Government except as provided below or otherwise expressly stated in the Purchase Order/~~Contract~~Subcontract.
- (2) The commercial computer software may be:
 - (A) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government, or the Institute in support and furtherance of its Government ~~contract~~Subcontract obligations; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) above;
 - (B) Reproduced for safekeeping (archives) or backup purposes;
 - (C) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and
 - (D) Disclosed and reproduced for use by Government or Institute ~~contract~~Subcontractors or their First-tier Subcontractors in accordance with the restricted rights in subdivisions (A), (B), and (C) above; provided they have the Government's or the Institute's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.
- (3) If the incorporated Supplier's/~~Contract~~Subcontractor's software license contains provisions or rights that are less restrictive than the restricted rights in subparagraph (d)(2) above, then the less restrictive provisions or rights shall prevail.
- (4) If the computer software is published, copyrighted computer software, it is licensed to the Government, and in support and furtherance of its Government ~~contract~~Subcontract obligations, the Institute, without disclosure prohibitions, with the rights in subparagraphs (d)(2) and (3) above. Any copyright license required in order to perform work under this First-tier Subcontract is freely transferable to any successor-in-interest of the ~~Contract~~Subcontractor, a successor ~~Contract~~Subcontractor to operate JPL, or the Government
- (5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in subparagraphs (d)(2), (3), and (4) above.
- (e) The ~~Contract~~Subcontractor warrants that it has the right to sell, license, or transfer the license for the software furnished to the customer under this ~~Contract~~Subcontract in accordance with the terms of this ~~Contract~~Subcontract.

EXPORT LICENSES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – ~~40/0309/04~~] [NFS 1852.225-70 – 02/00 (ALT 1 – 02/00)]

- (a) The ~~Contract~~Subcontractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this ~~contract~~Subcontract. In the absence of available license exemptions/exceptions, the ~~Contract~~Subcontractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.
- (b) The ~~Contract~~Subcontractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this ~~contract~~Subcontract, including instances where the work is to be performed on-site at JPL, where the foreign person will have access to export-controlled technical data or software.
- (c) The ~~Contract~~Subcontractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.
- (d) The ~~Contract~~Subcontractor shall be responsible for ensuring that the provisions of this clause apply to its First-tier Subcontractors.
- (e) The ~~Contract~~Subcontractor may request, in writing, that the Contracting Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

FACSIMILE COPIES ACCEPTABLE

[CT, FP-NR&D, FP-R&D, CIS, T&MC, ~~LH-T&M~~LH/T&M, FPC, CREI, ~~A-EA-E, RSA~~ – ~~40/0309/04~~]

The parties agree that facsimile (fax) copies of ~~contract~~Subcontract documents are just as binding as originally executed documents.

FEDERAL, STATE, AND LOCAL TAXES

[~~LH-T&MLH/T&M~~, T&MC – ~~4/99-10/03~~09/04] [~~FAR 52.229-3 – 1/01-04/03~~]

The rates, and any other amounts reimbursable under this ~~Contract~~Subcontract, include all Federal, State, and local taxes determined to be allowable under FAR 31.2 and any corresponding implementing or supplementing provisions in the NFS.

FELONY CONVICTION INFORMATION (~~CONTRACT~~SUBCONTRACTOR PERSONNEL IN RESIDENCE AT JPL)

[CT, ~~LH-T&MLH/T&M~~, T&MC – ~~40/03~~09/04]

(This Article applies to ~~contract~~Subcontracts/First-tier Ssubcontracts when ~~contract~~Subcontractor- and/or ~~First-tier~~ Ssubcontractor-furnished personnel will be performing work in residence at JPL- controlled facilities.)

When access to JPL facilities is required by ~~Contract~~Subcontractor personnel, the ~~Contract~~Subcontractor shall provide JPL-requested personnel access information, including an Affiliate Access Request (form JPL 1943), attached hereto, executed by the ~~Contract~~Subcontractor and the person requiring access. This request shall be provided to the JPL Plant Protection Office at least 24 hours prior to the time access is required to JPL premises. JPL reserves the right to approve or deny access to its facilities, based on the response given on form JPL 1943 or on other information available to JPL.

FIRST-TIER SUBCONTRACTS

[~~LH/T&M~~, T&MC – ~~4/99-10/03~~ 09/04] [FAR 52.244-2 – 08/98]

- (a) No First-tier Subcontract shall be made by the Subcontractor for the furnishing of any of the work herein Subcontracted for without the prior written consent or approval of JPL.
- (b) No First-tier Subcontract placed under this Subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement First-tier Subcontracts shall not exceed the fee limitations in FAR 15.404-4.
- (c) Unless the consent or approval specifically provides otherwise, consent by JPL to any First-tier Subcontract shall not constitute a determination (i) of the acceptability of any First-tier Subcontract terms or conditions, (ii) of the acceptability of any First-tier Subcontract price or of any amount paid under any First-tier Subcontract, or (iii) to relieve the Subcontractor of any responsibility for performing this Subcontract.

FIRST-TIER SUBCONTRACTS - LABOR STANDARDS

[T&MC, FPC – 09/04] [FAR 52.222-11 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) The Subcontractor or First-tier Subcontractor shall insert in any First-tier Subcontracts the Articles entitled "Davis-Bacon Act," "Subcontract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding of Funds," "First-tier Subcontracts (Labor Standards)," "Subcontract Termination - Debarment," "Disputes Concerning Labor Standards," "Compliance with Davis-Bacon and Related Act Regulations," and "Certification of Eligibility," and such other Articles as the Institute may by appropriate instructions require, and also a clause requiring the First-tier Subcontractors to include these Articles in any lower-tier subcontracts. The Subcontractor shall be responsible for the compliance by any First-tier Subcontractor or lower-tier subcontractor with all the Subcontract Articles cited above.

(b)

- (1) Within 14 days after award of the Subcontract, the Subcontractor shall deliver to JPL a completed "Incorporation of Labor Standards Provisions," form JPL 3557, for each First-tier Subcontract, including the First-tier Subcontractor's signed and dated acknowledgment that the Articles set forth in paragraph (a) of this Article have been included in the First-tier Subcontract.
- (2) Within 14 days after the award of any subsequently awarded First-tier Subcontract, the Subcontractor shall deliver to JPL an updated completed form JPL 3557 for such additional First-tier Subcontract.

FIRST-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – ~~8/04-10/03~~ 09/04] [FAR 52.244-6 – ~~40/95~~ 05/02]

(a) Definition.

- (1) "Commercial item," as used in this Article, has the meaning contained in the "Definitions" Article and in FAR 52.202-1, "Definitions."
- (2) "First-tier Subcontract," as used in this Article, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or First-tier Subcontractor at any tier.

(b) To the maximum extent practicable, the Subcontractor shall incorporate, and require its First-tier Subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Subcontract.

(c)

(1) The Subcontractor shall insert the following clauses in First-tier Subcontracts for commercial items:

- (i) 52.219-8, Utilization of Small Business Concerns (Oct 200) (15 U.S.C. 637(d)(2)(3)), in all First-tier Subcontracts that offer further First-tier Subcontracting opportunities. If the First-tier Subcontract (except First-tier Subcontracts to small business concerns) exceed \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer First-tier Subcontracting opportunities.
- (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
- (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
- (iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Subcontractor may flow down to First-tier Subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Subcontractor shall include the terms of this Article, including this paragraph (d), in First-tier Subcontracts awarded under this Subcontract.

~~Notwithstanding any other Article of this Contract except to the extent needed to satisfy the technical requirements and technical data (including software) deliverables under this Contract, the Contractor is not required to include any JPL provision or Article, other than those FAR provisions listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:~~

- ~~(1) 52.222-26, Equal Opportunity (E.O. 11246);~~
- ~~(2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a)); and~~
- ~~(3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).~~

~~(d) The Contractor shall include the terms of this provision, including this paragraph (d), in subcontracts awarded under this Contract.~~

GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&MLH/T&M~~, CREI – ~~40/0309/04~~–~~F~~] [NFS 1852.244-70 – 04/85]

(This Article is applicable to ~~contract~~Subcontracts and ~~First-tier S~~ubcontracts of \$100,000 or more. Work performed outside the United States is exempt from the requirements of this Article.)

Incorporate by reference NFS 1852.244-70, Geographic Participation in the Aerospace Program.

GOVERNMENT PROPERTY

[FP-NR&D, FP-R&D, ~~LH-T&MLH/T&M~~, T&MC, FPC, ~~A-EA-E~~ – ~~40/0309/04~~–~~F~~] [FAR 52.245-4 – ~~04/8406/03~~]

(a) JPL shall deliver to the ~~Contract~~Subcontractor, at the time stated in the Schedule, or, if not so stated, in sufficient time to enable the ~~Contract~~Subcontractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the ~~Contract~~Subcontractor, JPL shall equitably adjust affected provisions of this ~~Contract~~Subcontract in accordance with the Changes Article when:

- (1) The ~~Contract~~Subcontractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.
- (b) Title to JPL-furnished property shall remain in the Government. The ~~Contract~~Subcontractor shall use the JPL-furnished property only in connection with this ~~Contract~~Subcontract. The ~~Contract~~Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the ~~Contract~~Subcontractor, the ~~Contract~~Subcontractor assumes the risk and responsibility for its loss or damage, except:
- (1) For reasonable wear and tear;
 - (2) To the extent property is consumed in performing this ~~Contract~~Subcontract; or
 - (3) As otherwise provided for by the provisions of this ~~Contract~~Subcontract.
- (d) Upon completing this ~~Contract~~Subcontract, the ~~Contract~~Subcontractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this ~~Contract~~Subcontract or previously delivered to JPL. The ~~Contract~~Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the ~~Contract~~Subcontract price or shall be paid as directed by JPL.
- (e) If this ~~Contract~~Subcontract is to be performed outside the United States ~~of America, its territories, or possessions and its outlying areas~~, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.
- (f) If JPL-furnished property has been provided to the ~~Contract~~Subcontractor under this ~~Contract~~Subcontract, the ~~Contract~~Subcontractor shall submit NASA Form 1018, "The Report of Government-Owned/Contractor-Held Property" (or equivalent) (or a negative report, if applicable); to JPL ~~monthly and~~ annually (date to be determined by JPL).

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

[CT, FP-NR&D, FP-R&D, CIS, T&MC, ~~LH-T&MLH/T&M~~, FPC, CREI – ~~40/0309/04~~–~~FI~~] [FAR 52.223-3 – 01/97, Alt. I – 07/95]

(This Article applies if any materials are to be supplied which are defined as hazardous under the latest version of Federal Standard No. 313 [including revisions adopted during the term of the ~~Contract~~Subcontract].

Incorporate FAR 52.223-3 [Jan 97, Alt. I, Jul 95] with JPL ~~Subcontract Manager~~Subcontracts Manager in lieu of Contracting Officer and adding JPL with the Government in all respects including safety and rights to data.)

INJURY AND ILLNESS PREVENTION PROGRAM

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&MLH/T&M~~, FPC, CREI, ~~A-EA - E~~ – ~~40/0309/04~~]

All ~~Contract~~Subcontractors whose personnel work at a site in California must establish and implement an effective injury and illness prevention program in compliance with California law.

INSPECTION – TIME AND MATERIAL AND LABOR HOUR

[T&MC, ~~LH-T&MLH/T&M~~ – ~~40/0309/04~~–~~FI~~] [FAR 52.246-6 – ~~08/9605/01~~; ~~52.246-9~~ – ~~05/04~~]

(a) Definitions.

- (1) "~~Contract~~Subcontractor's managerial personnel," as used in this Article, means any of the ~~Contract~~Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (A) All or substantially all of the ~~Contract~~Subcontractor's business;
 - (B) All or substantially all of the ~~Contract~~Subcontractor's operation at any one plant or separate location at which the ~~Contract~~Subcontract is being performed; or
 - (C) A separate and complete major industrial operation connected with the performance of this ~~Contract~~Subcontract.
- (2) "Materials," as used in this Article, includes data when the ~~Contract~~Subcontract does not include the Warranty of Data clause.

- (b) The ~~Contract~~Subcontractor shall provide and maintain an inspection system acceptable to JPL covering the material, fabricating methods, work, and services under this ~~Contract~~Subcontract. Complete records of all inspection work performed by the ~~Contract~~Subcontractor shall be maintained and made available to JPL during ~~Contract~~Subcontract performance and for as long afterwards as the ~~Contract~~Subcontract requires.
- (c) JPL has the right to inspect and test all materials furnished and services performed under this ~~Contract~~Subcontract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. JPL, through any authorized representative, may also inspect the plant or plants of the ~~Contract~~Subcontractor or any ~~First-tier S~~ubcontractor engaged in ~~Contract~~Subcontract performance. JPL shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If JPL performs inspection or test on the premises of the ~~Contract~~Subcontractor or a ~~First-tier S~~ubcontractor, the ~~Contract~~Subcontractor shall furnish and shall require ~~First-tier S~~ubcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the ~~Contract~~Subcontract, JPL shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.
- (f) At any time during ~~Contract~~Subcontract performance, but not later than six months (or such other time as may be specified in the Schedule) after acceptance of the services or materials last delivered under this ~~Contract~~Subcontract, JPL may require the ~~Contract~~Subcontractor to replace or correct services or materials that at time of delivery failed to meet ~~Contract~~Subcontract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the "Timekeeping and Payments" Article of this ~~Contract~~Subcontract, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The ~~Contract~~Subcontractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (g) If the ~~Contract~~Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or ceiling price as increased by JPL), JPL may:
 - (1) By ~~contract~~Subcontract or otherwise, perform the replacement or correction, charge to the ~~Contract~~Subcontractor any increased cost, or deduct such increased cost from any amounts paid or due under this ~~Contract~~Subcontract (or require repayment of any payments theretofore made); or
 - (2) Terminate this ~~Contract~~Subcontract for default.
- (h) Notwithstanding paragraphs (f) and (g) above, JPL may at any time require the ~~Contract~~Subcontractor to remedy by correction or replacement, without cost to the Institute, any failure by the ~~Contract~~Subcontractor to comply with the requirements of this ~~Contract~~Subcontract, if the failure is due to (i) fraud, lack of good faith, or willful misconduct on the part of the ~~Contract~~Subcontractor's managerial personnel or (ii) the conduct of one or more of the ~~Contract~~Subcontractor's employees selected or retained by the ~~Contract~~Subcontractor after any of the ~~Contract~~Subcontractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This Article applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this ~~Contract~~Subcontract.
- (j) The ~~Contract~~Subcontractor has no obligation or liability under this ~~Contract~~Subcontract to correct or replace materials and services that at time of delivery do not meet ~~Contract~~Subcontract requirements, except as provided in this Article or as may be otherwise specified in the ~~Contract~~Subcontract.
- (k) Unless otherwise specified in the Schedule, the ~~Contract~~Subcontractor's obligation to correct or replace Government-furnished property shall be governed by the Article entitled "Government Property."
- (l) If this Subcontract, including those documents forming a part hereof by reference or incorporation, provides for or requires the submission of any of the work to JPL for approval, any such approval given by JPL, prior to final acceptance, shall not relieve the Subcontractor of its responsibility for complying with the specifications and other provisions of this Subcontract. Any such approval shall not be construed as an assumption by JPL of the responsibility that such work complies or will comply with the specifications or other provisions of this Subcontract.
- ~~(k) The Government has the right to inspect and evaluate the work performed or being performed under the Contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly~~

~~delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.~~

INSURANCE AND INDEMNIFICATION

[FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC – ~~2/00 40/0309/04 }-[]~~ [FAR 52.228-5 - ~~00/8901/97~~]

(Work performed outside the United States is exempt from the requirements of this Article.)

(a) This Article is applicable if:

- (1) The performance of this ~~ContractSubcontract~~ includes activities which could endanger non-~~ContractSubcontract~~ or personnel and such activities are performed at a location which is not secured by appropriate ~~ContractSubcontract~~ or-controlled access restrictions; or
- (2) This ~~ContractSubcontract~~ requires work on a Government installation or premises under the control of the Institute, unless:
 - (A) Only a small amount of work is required on the Government installation or Institute-controlled premises; or
 - (B) All such work is to be performed outside the United States, its possessions, or Puerto Rico.

(b) Insurance. The ~~ContractSubcontractor~~ shall, at its own expense, provide and maintain during the entire performance period of this ~~ContractSubcontract~~ at least the following kinds and minimum amounts of insurance with the Institute named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California.

- (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when ~~ContractSubcontract~~ operations are so commingled with the ~~ContractSubcontractor~~'s commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the ~~ContractSubcontractor~~ in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the ~~ContractSubcontractor~~ is qualified pursuant to statutory authority to do so.
- (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.

(c) Insurance Certificates and Endorsements. Before commencing work under this ~~ContractSubcontract~~, the ~~ContractSubcontractor~~ shall furnish (i) certificates of insurance for the coverages specified in paragraph (b) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the ~~contractSubcontract~~ for the coverage specified in paragraph (b)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this ~~ContractSubcontract~~ is to be performed prescribe, or (ii) until 30 days after the insurer or the ~~ContractSubcontractor~~ gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this ~~ContractSubcontract~~, and (ii) be primary and non-contributing to any insurance procured by the Institute. The ~~ContractSubcontractor~~ agrees to permit the Institute to examine its original policies, should the Institute so request. Should the ~~ContractSubcontractor~~ at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the ~~ContractSubcontractor~~.

(d) Indemnification. The ~~ContractSubcontractor~~ agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefore, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the ~~ContractSubcontractor~~ or any of its ~~First-tier S~~ubcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the ~~sole~~ negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.

(e) First-tier Subcontracts.

(1) The ContractSubcontractor shall insert the substance of this Article, including this paragraph (e), in First-tier Subcontracts under this ContractSubcontract if:

(A) The performance of the First-tier Subcontract includes activities which could endanger non-First-tier Subcontractor personnel and such activities are performed at a location which is not secured by appropriate First-tier Subcontractor-controlled access restrictions; or

(B) This First-tier Subcontract requires work on a Government installation or premises under the control of the Institute, unless:

Only a small amount of work is required on the Government installation or Institute-controlled premises; or

All such work is to be performed outside the United States, its possessions, or Puerto Rico, modified as necessary to correctly identify the parties.

(2) At least five days before entry of each such First-tier Subcontractor's personnel on the Government installation or Institute-controlled premises, the ContractSubcontractor shall furnish (or ensure that there has been furnished) to JPL a current certificate of insurance meeting the requirements of paragraph (c) above, for each such First-tier Subcontractor.

INTEGRITY OF UNIT PRICES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – ~~40/0309/04~~–~~FI~~] [FAR 52.215-14 – 10/97]

(This Article is applicable if the initial ContractSubcontract price exceeds \$100,000, unless the ContractSubcontract is for services where supplies are not required, construction or architect-engineer services, utility services, commercial items, or petroleum products.)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contractSubcontracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) The ContractSubcontractor shall insert the substance of this Article in all First-tier Subcontracts meeting the applicability prescription above.

LIMITATION OF LIABILITY

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – ~~40/0309/04~~–~~FI~~] [FAR 52.246-23, 52.246-24, and 52.246-25 – 02/97]

This Article includes 3 Parts: Part 2, Limitation of Liability – High Value Items, applies to all items delivered under this ContractSubcontract to JPL which have a unit cost exceeding \$100,000; Part 1, Limitation of Liability, applies to all other items delivered under this ContractSubcontract. Part 3, Limitation of Liability – Services, applies if the contractSubcontract is over \$100,000 and requires the performance of services.

Part 1: LIMITATION OF LIABILITY

(Applies to all items delivered under this ContractSubcontract other than High Value Items)

(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this ContractSubcontract, the ContractSubcontractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this ContractSubcontract) that (i) occurs after acceptance of the supplies delivered under this ContractSubcontract and (ii) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the ContractSubcontractor's managerial personnel. The term "ContractSubcontractor's managerial personnel," as used in this Article, means the ContractSubcontractor's directors, officers, and any of the ContractSubcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of:

(1) All or substantially all of the ContractSubcontractor's business;

- (2) All or substantially all of the ~~Contract~~Subcontractor's operations at any one plant, laboratory, or separate location at which the ~~Contract~~Subcontract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this ~~Contract~~Subcontract.
- (c) If the ~~Contract~~Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through purchase or use of the supplies required to be delivered under this ~~Contract~~Subcontract, the ~~Contract~~Subcontractor shall be liable to the Institute and the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Institute and the Government occurring after acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this ~~Contract~~Subcontract.
- (d) The ~~Contract~~Subcontractor shall include this Article, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all First-tier Ssubcontracts.

PART 2: LIMITATION OF LIABILITY – HIGH VALUE ITEMS

- (Applies to all items delivered under this ~~Contract~~Subcontract to JPL which have a unit cost exceeding \$100,000)
- (a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this ~~Contract~~Subcontract, the ~~Contract~~Subcontractor shall not be liable for loss of or damage to property of the Institute or the Government (including the supplies delivered under this ~~Contract~~Subcontract) that:
 - (1) Occurs after JPL acceptance of the supplies delivered under this ~~Contract~~Subcontract; and
 - (2) Results from any defects or deficiencies in the supplies.
 - (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or JPL's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the ~~Contract~~Subcontractor's managerial personnel. The term "~~Contract~~Subcontractor's managerial personnel," as used in this Article, means the ~~Contract~~Subcontractor's directors, officers and any of the ~~Contract~~Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (1) All or substantially all of the ~~Contract~~Subcontractor's business;
 - (2) All or substantially all of the ~~Contract~~Subcontractor's operations at any one plant, laboratory, or separate location at which the ~~Contract~~Subcontract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this ~~Contract~~Subcontract.
 - (c) If the ~~Contract~~Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through purchase or use of the supplies required to be delivered under this ~~Contract~~Subcontract, the ~~Contract~~Subcontractor shall be liable to the Institute and the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after JPL acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this ~~Contract~~Subcontract.
 - (d)
 - (1) This Article does not diminish the ~~Contract~~Subcontractor's obligations, to the extent that they arise otherwise under this ~~Contract~~Subcontract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this ~~Contract~~Subcontract.
 - (2) Unless this is a cost-reimbursement ~~contract~~Subcontract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by JPL, the ~~Contract~~Subcontractor shall, as determined by JPL:
 - (A) Pay the Institute the amount it would have cost the ~~Contract~~Subcontractor to make correction, repair, or replacement before the loss or damage occurred; or
 - (B) Provide other equitable relief.
 - (e) This Article shall not limit or otherwise affect the Institute's or the Government's rights under Articles, if included in this ~~Contract~~Subcontract, which cover:
 - (1) Warranty of technical data;
 - (2) Ground and flight risks or aircraft flight risks; or

(3) Government property.

- (f) In each ~~First-tier S~~ubcontract, except a ~~First-tier S~~ubcontract covered by paragraph (g) below, the ~~ContractSubcontractor~~ shall insert the appropriate Article, supplemented as necessary to reflect the relationship of the contracting parties, as follows:
- (1) In ~~First-tier S~~ubcontracts for high-value items only, after obtaining JPL's advance written approval, insert this Article, including this paragraph (f).
 - (2) In ~~First-tier S~~ubcontracts for other end items only, insert the clause at FAR subsection 52.246-23, Limitation of Liability.
- (g) In any ~~First-tier S~~ubcontract for both high-value items for which this Article is appropriate, and other end items for which the clause at FAR subsection 52.246-23, and any corresponding implementing or supplementing provisions in the NFS, is appropriate, after obtaining the JPL's advance written approval to use this Article, the ~~ContractSubcontractor~~ shall:
- (1) Include both this Article and the FAR clause;
 - (2) Identify high-value items by line item; and
 - (3) Insert the following preamble before paragraph (a) of this Article as used in that ~~First-tier S~~ubcontract:
- "(This Article shall apply only to those items identified in this ~~ContractSubcontract~~ as being subject to this Article.)"

PART 3: LIMITATION OF LIABILITY – SERVICES

- (Applies if the ~~contractSubcontract~~ is over \$100,000 and requires the performance of services)
- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the ~~ContractSubcontractor~~ is expressly responsible under this ~~ContractSubcontract~~ for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the ~~ContractSubcontractor~~ shall not be liable for loss of or damage to property of the Institute or the Government that:
- (1) Occurs after Institute acceptance of services performed under this ~~ContractSubcontract~~; and
 - (2) Results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Institute acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the ~~ContractSubcontractor~~'s managerial personnel. The term "~~ContractSubcontractor~~'s managerial personnel," as used in this provision, means the ~~ContractSubcontractor~~'s directors, officers, and any of the ~~ContractSubcontractor~~'s managers, superintendents, or equivalent representatives who have supervision or direction of:
- (1) All or substantially all of the ~~ContractSubcontractor~~'s business;
 - (2) All or substantially all of the ~~ContractSubcontractor~~'s operations at any one plant, laboratory, or separate location at which the ~~ContractSubcontract~~ is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this ~~ContractSubcontract~~.
- (c) If the ~~ContractSubcontractor~~ carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through the ~~ContractSubcontractor~~'s performance of services or furnishing of materials under this ~~ContractSubcontract~~, the ~~ContractSubcontractor~~ shall be liable to the Institute or the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Institute or the Government occurring after Institute acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this ~~ContractSubcontract~~.
- (d) The ~~ContractSubcontractor~~ shall include this provision, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all ~~First-tier S~~ubcontracts over \$25,000.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, ~~A-EA – E, RSA – 40/0309/04 – F~~] [FAR 52.203-12 – 06/97]

(This Article applies if this ~~Contract~~Subcontract is expected to exceed \$100,000.)

Incorporate by reference FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (June 1997).

LIMITATION ON WITHHOLDING OF PAYMENTS

[CT, LHT&M, T&MC, CREI – ~~40/0309/04 – F~~] [FAR 52.232-9 – 04/84]

If more than one Article of this ~~Contract~~Subcontract authorizes the temporary withholding of amounts otherwise payable to the ~~Contract~~Subcontract or for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one Article at that time; provided, that this limitation shall not apply to:

- (a) Withholdings pursuant to any Article relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this ~~Contract~~Subcontract; and
- (c) The recovery of overpayments.

MATERIAL AND WORKMANSHIP

[T&MC, FPC – ~~40/0309/04~~] [FAR 52.236-5 – 04/84]

- (a) All equipment, material, and articles incorporated into the work covered by this ~~Contract~~Subcontract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this ~~Contract~~Subcontract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The ~~Contract~~Subcontract or may, at its option, use any equipment, material, article, or process that, in the judgment of JPL, is equal to that named in the specifications, unless otherwise specifically provided in this ~~Contract~~Subcontract.
- (b) The ~~Contract~~Subcontract or shall obtain JPL's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the ~~Contract~~Subcontract or shall furnish to JPL the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this ~~Contract~~Subcontract or by JPL, the ~~Contract~~Subcontract or shall also obtain JPL's approval of the material or articles ~~which that~~ the ~~Contract~~Subcontract or contemplates incorporating into the work. When requesting approval, the ~~Contract~~Subcontract or shall provide full information concerning the material or articles. When directed to do so, the ~~Contract~~Subcontract or shall submit samples for approval at the ~~Contract~~Subcontract or's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- (c) All work under this ~~Contract~~Subcontract shall be performed in a skillful and workmanlike manner. JPL may require, in writing, that the ~~Contract~~Subcontract or removes from the work any employee JPL deems incompetent, careless, or otherwise objectionable.

MATERIAL REQUIREMENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – ~~40/0309/04 – F~~] [FAR 52.211-5 – 08/00]

- (a) Definitions (As used in this Article:
 - (1) New means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet ~~contract~~Subcontract requirements, including but not limited to, performance, reliability, and life expectancy.
 - (2) Reconditioned means restored to the original normal operating condition by readjustments and material replacement.
 - (3) Recovered material means waste materials and by-products that have been recovered or diverted from solid waste including post-consumer material, but ~~such the~~ term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
 - (4) Remanufactured means factory rebuilt to original specifications.

(5) Virgin material means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.

- (b) Unless this ~~contract~~Subcontract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the ~~Contract~~Subcontractor shall provide supplies that are new, reconditioned, or remanufactured as defined in this Article.
- (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.
- (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to JPL for approval.
- (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, ~~shall not may~~ be used unless in Subcontract performance if the ~~Contract~~Subcontractor has proposed the use of such supplies, and JPL has authorized their use.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, ~~A-EA-E, RSA~~ – ~~40/0309/04~~–~~1~~] [FAR 52.227-2 – 08/96]

(The provisions of this Article shall be applicable only if the amount of this ~~Contract~~Subcontract is expected to exceed \$100,000, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless ultimate delivery is into those areas.)

- (a) The ~~Contract~~Subcontractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this ~~Contract~~Subcontract of which the ~~Contract~~Subcontractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this ~~Contract~~Subcontract or out of the use of any supplies furnished or work or services performed under this ~~Contract~~Subcontract, the ~~Contract~~Subcontractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the ~~Contract~~Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the ~~Contract~~Subcontractor has agreed to indemnify the Government.
- (c) The ~~Contract~~Subcontractor agrees to include, and require inclusion of; this Article in all First-tier Ssubcontracts at any tier for supplies or services (including construction and architect-engineer First-tier Ssubcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$100,000.

NOTICE OF BUY AMERICAN ACT REQUIREMENT – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS

[FPC, T&MC – ~~40/0309/04~~] [FAR 52.225-12 – 05/02]

- (a) Definitions. "Construction material," "designated country construction material," "domestic construction material," "foreign construction material," and "NAFTA country construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act-Construction Materials under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).
- (b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the JPL Subcontract ManagerSubcontracts Manager in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.
- (c) Evaluation of offers.
 - (1) The Government through JPL will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

- (2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, JPL will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers.

- (1) When an offer includes foreign construction material, other than designated country or NAFTA country construction material, that is not listed in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic, designated country, or NAFTA country construction material.
- (2) If an alternate offer is submitted, the offeror shall submit it separately, with a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.
- (3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, JPL will evaluate only those offers based on use of the equivalent domestic, designated country, or NAFTA country construction material, and the offeror shall be required to furnish such domestic, designated country or NAFTA country construction material. An offer based on use of the foreign construction material for which an exception was requested:

Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

May be accepted if revised during negotiations.

NOTICE OF RADIOACTIVE MATERIALS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – ~~40/0309/04~~–~~F~~] [FAR 52.223-7 – 01/97]

(This Article is applicable only if this ~~Contract~~Subcontract is for radioactive materials as defined in this provision.)

Incorporate FAR 52.223-7 (January 1997) inserting 30 days in paragraph (a), with JPL ~~negotiator~~ Subcontract Manager~~Subcontracts Manager~~ in lieu of Contracting Officer, and adding JPL with the Government in all respects.

NOTICE TO JPL OF LABOR DISPUTES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, ~~A-EA-E~~ – ~~40/0309/04~~–~~F~~] [FAR 52.222-1 – 02/97]

- (a) If the ~~Contract~~Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this ~~Contract~~Subcontract, the ~~Contract~~Subcontractor shall immediately give notice to JPL. The initial notice shall include the following:
- (1) Identification of parts/materials, etc., which are or may be affected;
 - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower-tier subcontractor, advise as to potential alternate sources;
 - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
 - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
 - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
 - (6) Manufacturer/First-tier SSubcontractor and union data to include:
 - (A) Name, address, and telephone numbers of the manufacturer/First-tier SSubcontractor representative and Industrial Relations Representative to be contacted for further information;
 - (B) Union's name and local lodge number, if known.

If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.

- (b) The ~~Contract~~Subcontractor agrees to insert the substance of this Article, including this paragraph (b), in any First-tier SSubcontract to which a labor dispute may delay the timely performance of this ~~Contract~~Subcontract; except that each such First-tier SSubcontract shall provide that, in the event its timely performance is delayed or

threatened by delay by any actual or potential labor dispute, the ~~First-tier S~~ubcontractor shall immediately notify the next higher-tier subcontractor or JPL, as the case may be, concerning the dispute.

NOTIFICATION OF OWNERSHIP CHANGES

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&MLH/T&M, FPC, A-EA - E CREI- 40/0309/041-F~~] [FAR 52.215-19 – 10/97]

~~(This Article is applicable if it is contemplated that this contractor any modification will exceed \$550,000 cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to Subpart 31.2)~~

(a) ~~The Contract~~Subcontractor shall make the following notifications in writing:

(1) ~~When the Contract~~Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the ~~Contract~~Subcontractor shall notify the ~~Administrative Contracting Officer (ACO)~~JPL within 30 days.

(2) The Subcontractor shall also notify JPL within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) ~~The Contract~~Subcontractor shall:

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide ~~the ACO~~JPL or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the ~~Contract~~Subcontractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each ~~Contract~~Subcontractor ownership change.

(c) ~~The Contract~~Subcontractor shall include the substance of this clause in all First-tier Ssubcontracts under this ~~contract~~Subcontract that meet the applicability requirement of FAR 15.408(k).

ORDER OF PRECEDENCE

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, ~~A-EA - E, RSA - 40/0309/041-F~~] [FAR 52.215-8 – 10/97]

(a) The rights and obligations of the parties of this ~~Contract~~Subcontract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this ~~Contract~~Subcontract by reference or otherwise.

(b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:

(1) The Alterations Article.

(2) The GPs not altered.

(3) The Schedule, other than the Alterations Article.

(c) To the extent of any inconsistency between

(1) the Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this ~~Contract~~Subcontract by reference or otherwise, in the Schedule, and

(2) Any proposals, specifications or other documents or provisions which are made a part of this ~~Contract~~Subcontract by reference or otherwise in the Schedule,

(3) (c)(1) has order of precedence over (c)(2).

(d) All provisions of this ~~Contract~~Subcontract ~~which that~~ are required by their terms to be included in ~~First-tier S~~ubcontracts shall be required by the ~~Contract~~Subcontractor to take precedence in the ~~First-tier S~~ubcontract over any other provisions.

OTHER CONTRACTSUBCONTRACTS

[T&MC, FPC – ~~40/0309/041-F~~] [FAR 52.236-8 - 04/84]

(a) JPL may undertake or award other ~~contract~~Subcontracts for additional work at or near the site of the work under this ~~Contract~~Subcontract. The ~~Contract~~Subcontractor shall fully cooperate with the other ~~contract~~Subcontractors

and with JPL employees and shall carefully adapt scheduling and performing the work under this ~~ContractSubcontract~~ to accommodate the additional work, heeding any direction that may be provided by JPL. The ~~ContractSubcontract~~ shall not commit or permit any act that will interfere with the performance of work by any other ~~contractSubcontractor~~ or by JPL employees.

- (b) Where the ~~ContractSubcontractor~~'s work is associated with that of another ~~contractSubcontractor~~, the ~~ContractSubcontract~~ shall examine the adjacent work and report in writing to JPL any defect or condition preventing the proper performance of this ~~ContractSubcontract~~. If the ~~ContractSubcontract~~ proceeds without giving such notice, the ~~ContractSubcontract~~ shall be held to have accepted the work or materials and the existing conditions, and shall be responsible for any defects in its own work, and shall not be relieved of the obligation of any warranty because of any such condition or imperfection.

PAYROLLS AND BASIC RECORDS

[T&MC, FPC – ~~40/0309/04~~] [FAR 52.222-8 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) (a) Payrolls and basic records relating thereto shall be maintained by the ~~ContractSubcontractor~~ during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the Article entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the ~~ContractSubcontractor~~ shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. ~~ContractSubcontractors~~ employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)

- (1) The ~~ContractSubcontractor~~ shall submit weekly for each week in which any ~~ContractSubcontract~~ work is performed a copy of all payrolls to the Institute. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this Article. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005- 00014-1), U.S. Government Printing Office, Washington, DC 20402. The ~~ContractSubcontractor~~ is responsible for the submission of copies of payrolls by all ~~First-tier S~~ubcontractors.
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the ~~ContractSubcontractor~~ or ~~First-tier S~~ubcontractor or his or her agent who pays or supervises the payment of the persons employed under the ~~ContractSubcontract~~ and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this Article entitled "Payrolls and Basic Records" and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the ~~ContractSubcontract~~ during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the ~~ContractSubcontract~~.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this Article.

- (4) The falsification of any of the certifications in this Article may subject the ~~ContractSubcontractor~~ or ~~First-tier S~~ubcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The ~~ContractSubcontractor~~ or ~~First-tier S~~ubcontractor shall make the records required under paragraph (a) of this Article available for inspection, copying, or transcription by the Institute, the Contracting Officer, or the Department of Labor or their authorized representatives. The ~~ContractSubcontractor~~ or ~~First-tier S~~ubcontractor shall permit such representatives to interview employees during working hours on the job. If the ~~ContractSubcontractor~~ or ~~First-tier S~~ubcontractor fails to submit the required records or to make them available, the Institute may, after written notice to the ~~ContractSubcontractor~~, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

PERMITS AND RESPONSIBILITIES

[T&MC, FPC – ~~40/0309/04~~] [FAR 52.236-7 – 11/91]

The ~~ContractSubcontractor~~ shall, without additional expense to JPL, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The ~~ContractSubcontractor~~ shall also be responsible for all damages to persons or property that occur as a result of the ~~ContractSubcontractor~~'s fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others, including, but not limited to, the enclosing of the ~~ContractSubcontractor~~'s work area with adequate barricades and, where appropriate, flashing lights as approved by JPL. The ~~ContractSubcontractor~~ shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the ~~ContractSubcontract~~. The ~~ContractSubcontractor~~ agrees to indemnify the Institute and the Government against any loss, cost, liability, or damage by reason of the ~~ContractSubcontractor~~'s violation of or failure to comply with any applicable laws, executive orders, or regulations.

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS

[CT, ~~CIS~~-FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – ~~8/04 40/0309/04~~] [FAR 52.247-64 – ~~6/97~~ 6/00]

~~(This Article is applicable when the Contract or subcontract amount is expected to exceed \$100,000. This Article is not applicable for the acquisition of commercial items or commercial components.)~~

- (a) Except as provided in paragraph (b) below, the ~~ContractSubcontractor~~ shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this ~~ContractSubcontract~~.
- (b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the ~~ContractSubcontractor~~ shall notify JPL and request (i) authorization to ship in foreign-flag vessels or (ii) designation of available U.S.-flag vessels. If the ~~ContractSubcontractor~~ is authorized in writing by JPL to ship the supplies in foreign-flag vessels, the ~~ContractSubcontract~~ price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.
- (c)
- (1) The ~~ContractSubcontractor~~ shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590) 400 Seventh Street, SW, Washington, D.C. 20590. ~~ContractSubcontractor~~ and ~~First-tier S~~ubcontractor bills of lading shall be submitted through JPL.
- (2) The ~~ContractSubcontractor~~ shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
- (A) NASA shown as the sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.

- (F) Port of final discharge.
 - (G) Description of commodity.
 - (H) Gross weight in pounds and cubic feet, if available.
 - (I) Total ocean freight revenue in U.S. dollars.
- (d) ~~For purchases over \$100,000~~ The ~~Contract~~Subcontractor shall insert the substance of this Article, including this paragraph (d), in all ~~First-tier S~~ubcontracts or purchase orders under this ~~Contract~~Subcontract.
- (e) The requirement in paragraph (a) does not apply to:
- ~~(1) Purchases not exceeding \$100,000;~~
 - (1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 - (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
 - (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
 - ~~(5) Subcontracts for the acquisition of commercial items or commercial components.~~
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, Phone: 202-366-4610.

PREFERENCE FOR U.S.-FLAG AIR CARRIERS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, ~~A-EA - E - 40/0309/04~~-I] [FAR 52.247-63 – 01/97]

(This Article does not apply to ~~contract~~Subcontracts or ~~First-tier S~~ubcontracts for supplies, nonpersonal services, and construction that do not exceed \$100,000. This Article is not applicable to the acquisition of commercial items or commercial components.)

Incorporate by reference FAR 52.247-63, Preference for U.S.-Flag Air Carriers.

PRINTING AND DUPLICATING

[CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI, ~~A-EA - E - 40/0309/04~~-I] [NFS 1852.208-81 – 10/01]

(This Article does not apply unless this ~~Contract~~Subcontract requires the ~~Contract~~Subcontractor to provide printing or significant reproduction, i.e., in excess of 5,000 copies of a single page or in excess of 25,000 copies in the aggregate of multiple pages.)

- (a) NFS 1852.208-81, Restrictions on Printing and Duplicating (October 2001), is hereby incorporated into this Article in its entirety.

Note 1: The terms "documentation" referred to in paragraph (a), "printing" referred to in paragraph (b), and "production units" referred to in paragraph (c) of NFS 1852.208-81, Restrictions on Printing and Duplicating (October 2001), pertain solely to "Government publications." "Government publications" is defined as (i) reports intended primarily for internal use by the Government and (ii) reports or other materials of the type that the Government itself distributes to the public under an agency program. "Government publications" shall, unless subject to exemption under applicable regulations, be printed by or through the Government Printing Office, even though the distribution of these reports and materials may be effectuated by the ~~Contract~~Subcontractor for the Government.

Examples of documents which are "Government publications" include, but are not limited to: (i) publications released by the ~~Contract~~Subcontractor or a ~~First-tier S~~ubcontractor to the public for the purpose of promoting NASA or a Government agency sponsor; (ii) deliverable final reports, but not interim drafts of such reports; (iii) deliverable review board presentations and conclusions in which a majority of the review board membership consists of Government representatives.

Examples of documents which are not "Government publications" include, but are not limited to: (i) publications for internal usage and communication by JPL or any ~~contract~~Subcontractor or a ~~First-tier S~~ubcontractor such as JPL's or a ~~contract~~Subcontractor's Telephone Directory or JPL's or a ~~contract~~Subcontractor's internal newsletter; (ii) public information, education and public service documents, and award certificates printed for JPL's or a ~~contract~~Subcontractor's usage rather than Government usage, including those which may contain an incidental reference to sponsorship by NASA or another Government agency; (iii) publications for which the printing costs are not paid for by the Government; (iv) non-deliverable reports provided to the Government for informational purposes

which are suitable for publication in academic, technical, or professional journals and similar publications; and (v) review board presentations and conclusions in which a majority of the formal review board membership consists of JPL, ~~ContractSubcontractor~~, or ~~First-tier S~~ubcontractor representatives, where Government attendance is only incidental, and the ~~ContractSubcontract~~ does not expressly require Government approval of the proceedings.

- (b) To the extent that it applies to ~~First-tier S~~ubcontractors, the ~~ContractSubcontractor~~ will implement NASA Policy Guideline (NPG) 1490.5A, Procedural Guidance for Printing, Duplicating, and Copying Management, for all printing, duplicating, copying, forms, and mail management related to the performance of this ~~ContractSubcontract~~.

Note 2: Requests for waivers to permit commercial printers to print "Government publications" in cases of exigencies or other appropriate circumstances shall be submitted by the ~~ContractSubcontractor~~ to the JPL ~~Subcontract~~ ~~ManagerSubcontracts Manager~~ for submission to the NASA Printing Management Officer through the Contracting Officer.

PROHIBITION OF ~~CONTRACTSUBCONTRACTOR~~ USE OF PRIVATELY OWNED AIRCRAFT IN ~~CONTRACTSUBCONTRACT~~ PERFORMANCE

[CT, FPNR&D, FPR&D, T&MC, LH/T&M, FPC, CREI, ~~A-EA - E, RSA - 40/0309/04~~]

The ~~ContractSubcontractor~~, its employees, agents and ~~First-tier S~~ubcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this ~~ContractSubcontract~~ without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the ~~ContractSubcontractor~~ has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence. The ~~ContractSubcontractor~~ shall be required as a condition of JPL's approval to submit an endorsement naming the Institute as an additional insured in such aircraft liability insurance policy. The ~~ContractSubcontractor~~ shall include this provision in any ~~First-tier S~~ubcontract involving travel subject to JPL approval or requiring that the ~~First-tier S~~ubcontractor utilize a privately owned (noncommercial) aircraft.

PROHIBITION OF SEGREGATED FACILITIES

[CT, FP, NR&D, CIS, T&MC, LH/T&M, FPC, CREI, ~~A-EA - E - 40/0309/04~~] [FAR 52.222-21]

(The following Article is applicable to ~~ContractSubcontracts~~ where FAR 52.222-26, Equal Opportunity is applicable)
Incorporate by reference FAR 52.222-21, Prohibition of Segregated Facilities

PROTECTION OF EXISTING VEGETATION, STRUCTURES, MATERIALS, IMPROVEMENTS, UTILITIES, AND WORK IN PROGRESS

[T&MC, FPC - ~~40/0309/04~~] [FAR 52.236-9 - 04/84]

- (a) The ~~ContractSubcontractor~~ shall preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workers, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by JPL.
- (b) The ~~ContractSubcontractor~~ shall protect from damage all existing structures, improvements or utilities, the location of which is made known to it, within or outside the working area. Such protection shall include both the exterior and interior and the finish thereof and shall be performed by adequately covering or, with the approval of JPL, by temporary removal. Any damage to such facilities resulting from the ~~ContractSubcontractor~~'s failure to comply with the requirements of this ~~ContractSubcontract~~ or the failure to exercise reasonable care in the performance of the work shall be promptly repaired or replaced with materials, fixtures or equipment of the same kind, quality and size. If the ~~ContractSubcontractor~~ fails or refuses to repair any such damage promptly, JPL may have the necessary work performed and charge the cost thereof to the ~~ContractSubcontractor~~. Any materials or equipment temporarily removed for protection and not damaged shall be reinstalled.
- (c) The ~~ContractSubcontractor~~ shall at all times protect and preserve all work in progress, including, but not limited to, work performed, materials, supplies and equipment of every description (including property which may be Government-owned). The protection must be substantial and so placed as to be easily removed for inspection or to facilitate the progress of other work. All reasonable requests of JPL to enclose or specifically protect such property shall be complied with. If, as determined by JPL, materials, equipment, supplies, and work performed are not adequately protected by the ~~ContractSubcontractor~~, such property may be protected by JPL and the cost thereof may be charged to the ~~ContractSubcontractor~~ or deducted from any payment due it.

RELEASE OF INFORMATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, ~~A-EA-E, RSA – 40/0309/04~~]

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

- (a) The ~~ContractSubcontractor~~ agrees that all information released by the ~~ContractSubcontractor~~ for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, and advertising copy) directly related to the ~~ContractSubcontractor~~'s work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See enclosed form letter JPL 1737, "Release of Information.")
- (b) The ~~ContractSubcontractor~~ agrees to insert this clause including this paragraph in all First-tier Ssubcontracts.

REMOVAL OR REPLACEMENT OF PERSONNEL

[LH/T&M, T&MC – ~~40/0309/04~~]

JPL may at any time direct the ~~ContractSubcontractor~~ to remove or replace personnel from the performance of the work hereunder and the ~~ContractSubcontractor~~ shall forthwith comply with such direction. Any replacement shall be subject to the approval of JPL and, if ~~ContractSubcontractor~~ personnel are listed by name in the Schedule, the name and classification and rate or rates per hour shall be added to this ~~ContractSubcontract~~ by Supplemental Agreement.

REQUIRED NOTICES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, ~~RSA – 40/0309/04~~]

Unless otherwise specified in this ~~ContractSubcontract~~, any notice which the ~~ContractSubcontractor~~ is required to provide to JPL under any provision of this ~~ContractSubcontract~~ shall be directed to the JPL ~~Subcontract ManagerSubcontracts Manager~~ or the Manager, Acquisition Division, JPL, or their authorized representatives.

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, ~~A-EA-E – 4/99 40/0309/04~~–~~F~~][FAR 52.225- ~~44~~ 13 – ~~40/96~~-07/00]

Incorporate by reference FAR 52.225- ~~44~~ 13, Restrictions on Certain Foreign Purchases.

RESTRICTIONS ON FIRST-TIER S SUBCONTRACTOR SALES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – ~~40/0309/04~~–~~F~~][FAR 3.503, 52.203-6 – 07/95]

(This Article is applicable to ~~contractSubcontracts~~ and First-tier Ssubcontracts exceeding \$100,000 for other than commercial items.)

Incorporate by reference FAR 52.203-6, Restrictions on First-tier SSubcontractor Sales.

RIGHTS IN DATA – GENERAL

[CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, ~~RSA – 40/0309/04~~–~~F~~][FAR 52.227-14 – 06/87; NFS 1852.227-14 – 06/87]

(If the Article entitled "Existing Commercial Computer Software - Licensing" is applicable to this ~~ContractSubcontract~~, it shall apply in lieu of this Article regarding any acquisition of commercial computer software.)

(a) Definitions.

- (1) "Computer software," as used in this Article, means computer programs, computer data bases, and documentation thereof.
- (2) "Data," as used in this Article, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data, and computer software. The term does not include information incidental to ~~ContractSubcontract~~ administration, such as financial, administrative, cost, or pricing, or management information.
- (3) "Form, fit, and function data," as used in this Article, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- (4) "Institute" means the California Institute of Technology as a party to this ~~ContractSubcontract~~.

- (5) "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this ~~Contract~~Subcontract. JPL's rights under this ~~Contract~~Subcontract are rights of the California Institute of Technology as a party to this ~~Contract~~Subcontract.
- (6) "Limited rights," as used in this Article, means the rights of the Government, or in support and furtherance of its Government ~~contract~~Subcontract obligations, the Institute, in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this Article.
- (7) "Limited rights data," as used in this Article, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.
- (8) "Restricted computer software," as used in this Article, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.
- (9) "Restricted rights," as used in this Article, means the rights of the Government, and in support and in furtherance of its Government ~~contract~~Subcontract obligations, the Institute, in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this Article, or as otherwise may be provided in a collateral agreement incorporated in and made part of this ~~Contract~~Subcontract, including minor modifications of such computer software.
- (10) "Technical data," as used in this Article, means data (other than computer software) ~~which that~~ are of a scientific or technical nature.
- (11) "Unlimited rights," as used in this Article, means the right of the Government, or in support and furtherance of its Government ~~contract~~Subcontract obligations, the Institute, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights.

- (1) Except as provided in paragraph (c) of this Article regarding copyright, the Government and in support and furtherance of its Government ~~contract~~Subcontract obligations, the Institute, shall have unlimited rights in:
 - (A) Data first produced in the performance of this ~~Contract~~Subcontract;
 - (B) Form, fit, and function data delivered under this ~~Contract~~Subcontract;
 - (C) Data delivered under this ~~Contract~~Subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this ~~Contract~~Subcontract; and
 - (D) All other data delivered under this ~~Contract~~Subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this Article.
- (2) The ~~Contract~~Subcontract shall have the right to:
 - (A) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the ~~Contract~~Subcontract or in the performance of this ~~Contract~~Subcontract, unless provided otherwise in paragraph (d) of this Article;
 - (B) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this Article;
 - (C) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this Article; and
 - (D) Establish claim to copyright subsisting in data first produced in the performance of this ~~Contract~~Subcontract to the extent provided in subparagraph (c)(1) of this Article.

(c) Copyright.

- (1) Data First Produced in the Performance of This ~~Contract~~Subcontract.
 - (A) Unless provided otherwise in paragraph (d) of this Article, the ~~Contract~~Subcontract or may establish, without prior approval of JPL, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this ~~Contract~~Subcontract and published in

academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission JPL is required to establish claim to copyright subsisting in all other data first produced in the performance of this ~~Contract~~Subcontract.

- (B) When claim to copyright is made, the ~~Contract~~Subcontractor shall affix the applicable copyright or notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including the Prime ~~Contract~~Subcontract number) to the data when such data are delivered to JPL, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. (Acknowledgment shall include a statement that "This work was performed for the Jet Propulsion Laboratory, California Institute of Technology, sponsored by the United States Government under a Prime Contract between the California Institute of Technology and NASA.")
 - (C) For data other than computer software, the ~~Contract~~Subcontractor grants to the Government, and in support and furtherance of its Government ~~contract~~Subcontract obligations, the Institute, any successor-in-interest of the Institute or a successor ~~contract~~Subcontractor to operate JPL, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government.
 - (D) For computer software, the ~~Contract~~Subcontractor grants to the Government, and in support and furtherance of its Government ~~contract~~Subcontract obligations, the Institute, any successor-in-interest of the Institute or a successor ~~contract~~Subcontractor to operate JPL, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.
- (2) Data Not First Produced in the Performance of This ~~Contract~~Subcontract. The ~~Contract~~Subcontractor shall not, without prior written permission of JPL, incorporate in data delivered under this ~~Contract~~Subcontract any data not first produced in the performance of this ~~Contract~~Subcontract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the ~~Contract~~Subcontractor identifies such data and grants to the Government, and in support and furtherance of its Government ~~contract~~Subcontract obligations, the Institute, or acquires on their behalf, a license of the same scope as set forth in subparagraph (c)(1) of this Article; provided, however, that if such data are computer software, the ~~Contract~~Subcontractor grants to the Government and in support and furtherance of its Government ~~contract~~Subcontract obligations, the Institute, or acquires on their behalf, a paid-up nonexclusive irrevocable worldwide license as set forth in subparagraph (g)(3) of this Article.
- (3) Removal of Copyright Notices. JPL agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.
- (d) Release, Publication, and Use of Data.
- (1) The ~~Contract~~Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data other than computer software first produced or specifically used by the ~~Contract~~Subcontractor in the performance of this ~~Contract~~Subcontract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this Article or expressly set forth in this ~~Contract~~Subcontract.
 - (2) The ~~Contract~~Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of this ~~Contract~~Subcontract which ~~that~~ contain restrictive markings, the ~~Contract~~Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by JPL.
 - (3)
 - (A) The ~~Contract~~Subcontractor agrees not to establish claim to copyright or publish or release to others any computer software first produced in the performance of this ~~Contract~~Subcontract without JPL's prior written permission.
 - (B) If the Government desires to obtain copyright in computer software first produced in the performance of this ~~Contract~~Subcontract for which permission to copyright has not been granted to the ~~Contract~~Subcontractor as set forth in subdivision (d)(3)(A) of this Article, the Contracting Officer or the Institute may direct the ~~Contract~~Subcontractor to assert, or authorize the assertion of, claim to copyright in said data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(C) Whenever the word "establish" is used in this clause, with reference to a claim to copyright, it shall be construed to mean "assert."

(e) Unauthorized Marking of Data.

- (1) Notwithstanding any other provisions of this ~~Contract~~Subcontract concerning inspection or acceptance, if any data delivered under this ~~Contract~~Subcontract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this Article and use of such is not authorized by this Article, or if such data bears any other restrictive or limiting markings not authorized by this ~~Contract~~Subcontract, JPL may at any time either return the data to the ~~Contract~~Subcontractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings:
 - (A) JPL shall make written inquiry to the ~~Contract~~Subcontractor affording the ~~Contract~~Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (B) If the ~~Contract~~Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer through JPL for good cause shown), the Government or JPL shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
 - (C) If the ~~Contract~~Subcontractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(A) of this Article, the Contracting Officer through JPL shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer through JPL determines that the markings are authorized, the ~~Contract~~Subcontractor shall be so notified in writing. If the Contracting Officer through JPL determines, with concurrence of NASA, that the markings are not authorized, the Contracting Officer through JPL shall furnish the ~~Contract~~Subcontractor a written determination, which determination shall become the final Government decision regarding the appropriateness of the markings unless the ~~Contract~~Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government and JPL shall continue to abide by the markings under this subdivision (e)(1)(C) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government or JPL shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- (2) The time limits in the procedures set forth in subparagraph (e)(1) of this Article may be modified in accordance with NASA regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
- (3) This paragraph (e) does not apply if this ~~Contract~~Subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
- (4) (Reserved)

(f) Omitted or Incorrect Markings.

- (1) Data delivered to the Government or JPL without either the limited rights or restricted rights notice as authorized by paragraph (g) of this Article, or the copyright notice required by paragraph (c) of this Article, shall be deemed to have been furnished with unlimited rights, and the Government and the Institute assume no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government or JPL, the ~~Contract~~Subcontractor may request, within six months (or longer time approved by JPL for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the ~~Contract~~Subcontractor's expense, and JPL may agree to do so if the ~~Contract~~Subcontractor:
 - (A) Identifies the data to which the omitted notice is to be applied;
 - (B) Demonstrates that the omission of the notice was inadvertent;
 - (C) Establishes that the use of the proposed notice is authorized; and

(D) Acknowledges that the Government and the Institute have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) JPL may also:

(A) Permit correction at the ~~Contract~~Subcontractor's expense of incorrect notices if the ~~Contract~~Subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(B) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software.

(1) When data other than that listed in subdivisions (b)(1)(A), (B), and (C) of this Article are specified to be delivered under this ~~Contract~~Subcontract and qualify as either limited rights data or restricted computer software, if the ~~Contract~~Subcontractor desires to continue protection of such data, the ~~Contract~~Subcontractor shall withhold such data and not furnish them to JPL under this ~~Contract~~Subcontract. As a condition to this withholding, the ~~Contract~~Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer ~~data based database~~ for delivery to JPL are to be treated as limited rights data and not restricted computer software.

(2) Notwithstanding paragraph (g)(1) of this Article, the ~~Contract~~Subcontractor may identify and specify the delivery of limited rights data, or JPL or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the ~~Contract~~Subcontractor may affix the following "Limited Rights Notice" to the data and the Institute and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this Article, in accordance with such Notice:

LIMITED RIGHTS NOTICE

(a) These data are submitted with limited rights under Government contract No. NAS7-03001 (and JPL ~~First-tier S~~ubcontract No. _____). These data may be reproduced and used by the Institute or the Government with the express limitation that they will not, without written permission of the ~~Contract~~Subcontractor, be used for purposes of manufacture nor disclosed outside the Institute or the Government; except that the Institute or the Government may disclose these data outside the Institute or the Government for the following purposes, if any, provided that the Institute or the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use by support service ~~contract~~Subcontractors.

(2) (Reserved)

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

(3)

(A) Notwithstanding paragraph (g)(1) of this Article, the ~~Contract~~Subcontractor may identify and specify the delivery of restricted computer software, or JPL or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the ~~Contract~~Subcontractor may affix the following "Restricted Rights Notice" to the computer software and the Institute and the Government will thereafter treat the computer software, subject to the provisions of paragraphs (e) and (f) of this Article, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Government contract No. NAS7-03001 (and JPL ~~First-tier S~~ubcontract No. _____). It may not be used, reproduced, or disclosed by the Institute or the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the ~~Contract~~Subcontract.

- (b) This computer software may be:
- (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Institute or Government installation to which such computer or computers may be transferred;
 - (2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;
 - (5) Disclosed to and reproduced for use by support service ~~contract~~Subcontractors in accordance with subparagraphs (b)(1) through (4) of this Article, provided the Institute or the Government makes such disclosure or reproduction subject to these restricted rights; and
 - (6) Used or copied for use in or transferred to a replacement computer.
- (c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Institute and the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this Article.
- (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the ~~Contract~~Subcontract.
- (e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.
- (End of notice)
- (B) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE - SHORT FORM

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. NAS7-03001 (and ~~First-tier~~ Subcontract No. _____ with [name of ~~First-tier~~ Subcontractor]).

(End of notice)

- (C) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Institute and the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this Article, unless the ~~Contract~~Subcontractor includes the following statement with such copyright notice: "Unpublished - rights reserved under the Copyright Laws of the United States."
- (f) ~~First-tier~~ Subcontracting. The ~~Contract~~Subcontractor has the responsibility to obtain from its ~~First-tier~~ Subcontractors all data and rights therein necessary to fulfill the ~~Contract~~Subcontractor's obligations to the Government and the Institute under this ~~Contract~~Subcontract. If a ~~First-tier~~ Subcontractor refuses to accept terms affording the Government or the Institute such rights, the ~~Contract~~Subcontractor shall promptly bring such refusal to the attention of JPL and not proceed with ~~First-tier~~ Subcontract award without further authorization.
- (g) Relationship to Patents. Nothing contained in this Article shall imply a license to the Government or the Institute under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government or the Institute.
- (h) Inspection of Data Withheld. The ~~Contract~~Subcontractor agrees, except as may be otherwise specified in this ~~Contract~~Subcontract for specific data items listed as not subject to this paragraph, that the Contracting Officer, an authorized representative, or JPL may, up to three years after acceptance of all items to be delivered under this ~~Contract~~Subcontract, inspect at the ~~Contract~~Subcontractor's facility any data withheld pursuant to subparagraph (g)(1) of this Article, for purposes of verifying the ~~Contract~~Subcontractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the first-tier ~~First-tier~~ Subcontractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

RIGHTS IN TECHNICAL PROPOSAL DATA

[CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI, ~~RSA – 40/0309/04~~–~~F~~] [FAR 52.227-23 – 06/87]

(This Article applies to ~~contract~~Subcontract~~s~~ resulting from a proposal containing technical data. The Article does not cover rights to commercial or financial information contained in the successful proposal.)

It is agreed that as a condition of the award of this ~~Contract~~Subcontract~~, and notwithstanding the conditions of any notice appearing thereon, the Government and the Institute shall have the right to use, duplicate, and disclose, and have others so do, for any purpose whatsoever, the technical data contained in the proposals upon which this~~ ~~Contract~~Subcontract ~~and any future modifications are based.~~

SAFETY AND HEALTH – CONSTRUCTION

[T&MC, FPC – ~~40/0309/04~~–~~F~~] [NFS 1852.223-70 – 04/02]

(This Article is applicable only if the ~~Contract~~Subcontract ~~involves work either (i) conducted completely or partly on premises owned or controlled by the Government, (ii) that includes construction, alteration or repair of facilities in excess of the simplified acquisition threshold, (iii) regardless of place of performance, that involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including~~ ~~contract~~Subcontract~~or employees working on NASA~~ ~~contract~~Subcontract~~s) or high value equipment or property and the hazards are not adequately addressed by Occupational Safety and Health (OSHA) or Department of Transportation (DOT) regulations (if applicable) or (iv) when JPL determines that the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.)~~

- (a) The ~~Contract~~Subcontract~~or shall take all reasonable safety and occupational health measures in performing under this~~ ~~Contract~~Subcontract ~~and shall, to the extent set forth below, submit a safety plan and a health plan (applicable to the work to be performed under this~~ ~~Contract~~Subcontract~~) for JPL's approval. The~~ ~~Contract~~Subcontract~~or shall comply with all Federal, State, and local laws applicable to safety and occupational health in effect on the date of this~~ ~~Contract~~Subcontract ~~and with the safety and occupational health standards, specifications, reporting requirements, and provisions set forth below.~~
- (b) The ~~Contract~~Subcontract~~or shall take or cause to be taken any other safety and occupational health measures JPL may reasonably direct. To the extent that the~~ ~~Contract~~Subcontract~~or may be entitled to an equitable adjustment for those measures under the terms and conditions of this~~ ~~contract~~Subcontract~~, the equitable adjustment shall be determined pursuant to the procedures of the Article of this~~ ~~Contract~~Subcontract ~~entitled "Changes," provided, that no adjustment shall be made under this Safety and Health Article for any change for which an equitable adjustment is expressly provided under any other provision of the~~ ~~Contract~~Subcontract~~.~~
- (c) Standards. The following safety and health standards, specifications, issuances, and reporting requirements are prescribed pursuant to paragraph (a).
 - (1) General Standards and Specifications: The ~~Contract~~Subcontract~~or shall comply with applicable provisions of the Occupational Safety and Health Standards of the Occupational Safety and Health Act of 1970, Rules and Regulations of the Department of Labor issued pursuant thereto and regulations of states provided for under the Act. Within California the~~ ~~Contract~~Subcontract~~or shall comply with applicable provisions of the California Occupational Safety and Health Act of 1973. NASA Procedures and Guidelines (NPGs) 8715. 3, NASA Safety Manual with Changes Through Change I 6/19/02, dated January 24, 2000, shall be used as a general policy guide to establish a safety program to be included in the safety and health plan to be submitted in accordance with paragraph (a) above.~~
 - (2) As part of the ~~Contract~~Subcontract~~or's safety and health plan, the~~ ~~Contract~~Subcontract~~or shall furnish a list of all hazardous operations to be performed, including operations covered by measures indicated in paragraphs (a) and (b) of this Article and a list of other major or key operations required or planned in the performance of the~~ ~~Contract~~Subcontract~~, even though not deemed hazardous by the~~ ~~Contract~~Subcontract~~or. JPL and the~~ ~~Contract~~Subcontract~~or shall jointly decide which operations are to be considered hazardous with JPL as the final authority. Before hazardous operations commence, the~~ ~~Contract~~Subcontract~~or shall develop, review, and provide plans for the operation for JPL to review. The~~ ~~Contract~~Subcontract~~or's review procedure shall submit for JPL concurrence:~~
 - (i) Written hazardous operating procedures for all hazardous operations; and/or
 - (ii) Qualification standards for personnel involved in hazardous operations.
 - (3) Flight Program/Project Safety: The ~~Contract~~Subcontract~~or shall include in each Program/Project Plan prepared for a flight project a description of the risk management process that addresses the safety needs and special safety monitoring required for the flight program/project. Project Plans containing such~~

requirements will be referenced in the flight project task order issued by the Contracting Officer under the Prime ~~Contract~~Subcontract and the ~~Contract~~Subcontract or shall comply with those requirements.

- (4) Nuclear Safety: Radioactive material will be handled in accordance with appropriate Federal, State, local and tribal regulations and requirements, to specifically include those of the State of California, Department of Energy and/or Nuclear Regulatory Commission. Launching of nuclear materials into space shall be done in accordance with National Security Council/Presidential Directive 25, as of May 8, 1996. Chapter 5, Nuclear safety, of NPG 8715.3, NASA Safety manual provides specific additional NASA requirements.
- (5) Propulsion Safety: The ~~Contract~~Subcontract or shall comply with all applicable Federal, State, and local requirements applicable to propulsion safety, and the requirements shall be used to establish a propulsion safety program (if applicable) to be included in the safety and health plan to be submitted in accordance with paragraph (a) above.
- (6) Fire Safety: The ~~Contract~~Subcontract or shall comply with all applicable Federal, State, and Local requirements pertaining to Fire Protection and Life Safety. NASA STD 8719.11, NASA Safety Standard for Fire Protection and Life Safety, dated December 19, 2000, will be followed to ensure safety of NASA facilities.
- (7) Ammunition and Explosive Safety: The ~~Contract~~Subcontract or shall comply with all applicable Federal, State, and Local requirements applicable to ammunition and explosive safety. The requirements of NSS 1740.12 NASA Safety standard for explosives, propellants, and Pyrotechnics, dated August 1993 shall be used to establish a propulsion safety program to be included in the safety and health plan to be submitted in accordance with paragraph (a) above.
- (8) Pressure Vessel and Pressure System Safety: The ~~Contract~~Subcontract or shall establish a pressure systems safety and recertification program in accordance with NPD 8710.5, NASA Safety Policy for Pressure vessels and Systems, dated march 17, 1998
- (9) Any additional safety and health standards, specifications, issuances and reporting requirements set forth in this ~~Contract~~Subcontract.
- (d) The safety and health plan to be submitted by the ~~Contract~~Subcontract or pursuant to paragraph (a) above shall implement the requirements of this Article and of the standards and specifications of paragraph (c) of this Article and shall describe the means to be employed by the ~~Contract~~Subcontract or to monitor and enforce said requirements. The plan shall include the ~~Contract~~Subcontract or's standards and criteria for imposing safety and health standards upon its ~~First-tier S~~ubcontractors of any tier and its plans and procedures for monitoring compliance with such standards. A safety and health plan for similar work performed by the ~~Contract~~Subcontract or on a Federal ~~contract~~Subcontract may be submitted for review and approval under this Article.
- (e) The ~~Contract~~Subcontract or shall immediately notify and promptly report to JPL any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property (or, if this ~~Contract~~Subcontract sets forth any acceptable threshold limits of contamination, any contamination of property beyond those stated limits) -or property loss of \$25,000 or more, or Close Call (a situation or occurrence with no injury, no damage or only minor damage (less than \$ 1000) but possesses the potential; to cause any type mishap, or any injury, damage or negative mission impact) that may be of immediate interest to NASA, arising out of work performed under this ~~Contract~~Subcontract. The ~~Contract~~Subcontract or is not required to include in any report an expression of opinion as to the fault or negligence of any employee. Service ~~contract~~Subcontractors (excluding construction ~~contract~~Subcontracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the ~~contract~~Subcontract Schedule. The ~~Contract~~Subcontract or shall investigate all work-related incidents or accidents and Close Calls to the extent necessary to determine their causes and furnish the JPL a report, in such form as JPL may require, of the investigative findings and proposed or completed corrective actions. In addition, the ~~Contract~~Subcontract or shall comply with the illness, incident and injury experience reporting requirements set forth below or elsewhere in this ~~Contract~~Subcontract.
- (f) Illness, Incident, and Injury Experience Reports.
 - (1) Reports required by this Article or elsewhere in this ~~Contract~~Subcontract shall be furnished in three copies unless otherwise specified.
 - (2) The following illness, incident, and injury experience reports are prescribed pursuant to paragraph (e) above:

- (A) Experience Reports: The ~~Contract~~Subcontractor shall prepare and submit to JPL quarterly and semi-annual reports of occupational related illness, incidents, injury experience, worker's compensation costs; and Government property damage due to mishaps or natural phenomena in such detail as prescribed in formats approved by the JPL ~~Subcontract Manager~~Subcontracts Manager.
- (B) Investigative Reports: The ~~Contract~~Subcontractor shall furnish reports of investigation of individual incidents or accidents or close calls in formats approved by JPL; provided, however, that the ~~Contract~~Subcontractor shall not be required to furnish personally identifiable information concerning ~~Contract~~Subcontractor or ~~First-tier S~~ubcontractor employees. Lessons learned from these reports, excluding those related to close calls unless the ~~Contract~~Subcontractor believes that material value may be derived from such reporting, shall be reported to JPL (for use by JPL as inputs into the NASA Lessons Learned Program).
- (C) Mishap Reports: The ~~Contract~~Subcontractor shall furnish JPL mishap reports and respond to JPL requests for mishap reviews. The ~~Contract~~Subcontractor shall conduct its own mishap investigations consistent with NPD 8621.1H, NASA Mishap and Close-Call Reporting, Investigation, and Recordkeeping Policy, dated October 2, 2002, with the understanding that all references to NASA in that policy shall be interpreted to mean the ~~Contract~~Subcontractor. The ~~Contract~~Subcontractor shall utilize the NPD 8621.1, dated June 2, 2000 procedures as guidelines. The ~~Contract~~Subcontractor shall also report to the JPL ~~Subcontract Manager~~Subcontracts Manager any incidents that may have visibility in the press, mission failures, or mission anomalies ~~which that~~ will have high JPL or NASA visibility in the press.
- (D) The ~~Contract~~Subcontractor shall furnish such other reports as JPL determines to be related to the ~~Contract~~Subcontractor's safety and health program and its experiences there under.

(g)

- (1) JPL may notify the ~~Contract~~Subcontractor in writing of any noncompliance with this Article and specify corrective actions to be taken. The ~~Contract~~Subcontractor shall promptly take and report any necessary corrective action.
- (2) When the JPL ~~Subcontract Manager~~Subcontracts Manager becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including ~~contract~~Subcontractor employees working on NASA ~~contract~~Subcontracts) or high value mission critical equipment or property, the JPL ~~Subcontract Manager~~Subcontracts Manager shall notify the ~~Contract~~Subcontractor orally, with written conformation. The ~~Contract~~Subcontractor shall promptly take and report any necessary corrective action. If the ~~Contract~~Subcontractor fails or refuses to institute prompt corrective action in accordance with subparagraph (g)(1) of this Article, JPL may invoke the stop work order Article of this ~~Contract~~Subcontract or any other remedy legally available to the Institute in the event of such failure or refusal.
- (h) The ~~Contract~~Subcontractor (or ~~First-tier S~~ubcontractor or supplier) shall cause the substance of this Article, including this paragraph (h) and any applicable provisions of this ~~Contract~~Subcontract, with any appropriate changes of designations of the parties, to be inserted in ~~First-tier S~~ubcontracts of every tier which involve work to which this Article is applicable as specified in the preamble above.
- (i) The ~~Contract~~Subcontractor agrees that authorized representatives of JPL or the Contracting Officer shall have access to and the right to examine the sites or areas where work under this ~~Contract~~Subcontract is being performed in order to determine the adequacy of the ~~Contract~~Subcontractor's safety and health measures under this Article.

SELECTION OF PERSONNEL

[LH/T&M, T&MC – ~~40/0309/04~~]

If ~~Contract~~Subcontractor personnel are not listed by name in the Schedule, the ~~Contract~~Subcontractor shall be responsible for selecting personnel who are well qualified to perform in the classifications listed, subject, however, to the initial and continuing approval of JPL.

SIGNS AND ADVERTISEMENTS

[T&MC, FPC – ~~40/0309/04~~]

No signs or advertisements will be allowed on the site unless prior written approval is obtained from JPL.

~~SMALL, SMALL DISADVANTAGED, OR WOMEN-OWNED SMALL FIRST-TIER SSUBCONTRACTING PLAN~~

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – ~~8/01-10/0309/04~~] – [FAR 52.219-9 – ~~8/96~~ 01/02]

(This Article is applicable if the basic ~~contractSubcontract~~ or any separate modification exceeds \$500,000 [\$1,000,000 for construction of any public facility], except it does not apply to ~~contractSubcontracts~~ with small businesses or orders under GSA ~~contractSubcontracts~~. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) If there will be any ~~First-tier Ssubcontracting~~ under this ~~ContractSubcontract~~ and the basic or any modification exceeds \$500,000, (\$1,000,000 for construction of any public facility), the ~~ContractSubcontractor~~ agrees to submit for JPL approval a ~~, small disadvantaged, or women-owned small-First-tier SSubcontracting Plan (Plan) that separately addresses First-tier Ssubcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned business concerns. The ContractSubcontractor further agrees to~~ -provide a written update to the Plan for every modification exceeding \$500,000 (\$1,000,000 for construction of a public facility). JPL's approval will be based on the requirements in JPL form 0294 entitled "Requirements for a Subcontracting Plan." The approved Plan and approved updates will be deemed incorporated into this ~~ContractSubcontract~~.
- (b) If a Plan is required under this ~~ContractSubcontract~~, SF 294, "Subcontracting Report for Individual Contracts," and SF 295, "Summary Subcontract Report," are deliverables, which must be submitted by the ~~ContractSubcontractor~~ or to the JPL ~~negotiator Subcontract ManagerSubcontracts Manager~~ in accordance with the instructions on the forms.
- (c) It is understood and agreed that the failure of the ~~ContractSubcontractor~~ to comply in good faith with the Article of this ~~ContractSubcontract~~ entitled "Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns," or with any Plan required to be included in this ~~ContractSubcontract~~, shall be a material breach of this ~~ContractSubcontract~~.

~~SMALL BUSINESS FIRST-TIER SSUBCONTRACTING REPORTING~~

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – ~~40/0309/04~~] – [NFS 1852.219-75 – ~~05/99~~]

~~(This Article is applicable if the basic contractSubcontract or any separate modification exceeds \$500,000 [\$1,000,000 for construction of any public facility], except it does not apply to contractSubcontracts with small businesses or orders under GSA contractSubcontracts. Work performed outside the United States is exempt from the requirements of this Article.)~~

- ~~(a) The ContractSubcontractor shall submit the Summary Subcontract Report (Standard Form (SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.~~
- ~~(b) The ContractSubcontractor shall include this clause in all First-tier Ssubcontracts that include the Article titled "Small Business Subcontracting Plan" (FAR 52.219-9)~~

~~SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION~~

[T&MC, FPC – ~~40/0309/04~~] [FAR 52.236-21 – ~~02/97~~]

- (a) The ~~ContractSubcontractor~~ shall keep on the work site a copy of the drawings and specifications and shall at all times give JPL access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to JPL, which shall promptly make a determination in writing. Any adjustment by the ~~ContractSubcontractor~~ without such a determination shall be at its own risk and expense. JPL shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (b) Whenever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of JPL is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" JPL, unless otherwise expressly stated.
- (c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this ~~ContractSubcontract~~ unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

- (d) Shop drawings means drawings, submitted to JPL by the ~~Contract~~Subcontractor, ~~First-tier S~~ubcontractor, or any lower tier ~~First-tier S~~ubcontractor pursuant to a construction ~~contract~~Subcontract, showing in detail (i) the proposed fabrication and assembly of structural elements, and (ii) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the ~~contract~~Subcontractor to explain in detail specific portions of the work required by the ~~contract~~Subcontract. JPL may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this ~~Contract~~Subcontract.
- (e) If this ~~Contract~~Subcontract requires shop drawings, the ~~Contract~~Subcontractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with ~~Contract~~Subcontract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to JPL without evidence of the ~~Contract~~Subcontractor's approval may be returned for resubmission. JPL will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate JPL's reasons therefore. Any work done before such approval shall be at the ~~Contract~~Subcontractor's risk. Approval by JPL shall not relieve the ~~Contract~~Subcontractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this ~~Contract~~Subcontract, except with respect to variations described and approved in accordance with (f) below.
- (f) If shop drawings show variations from the ~~contract~~Subcontract requirements, the ~~Contract~~Subcontractor shall describe such variations in writing, separate from the drawings, at the time of submission. If JPL approves any such variation, JPL shall issue an appropriate ~~contract~~Subcontract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) The ~~Contract~~Subcontractor shall submit to JPL for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the JPL and one set will be returned to the ~~Contract~~Subcontractor.

SUBCONTRACT TERMINATION – DEBARMENT

[T&MC, FPC – 09/04] [FAR 52.222-12 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

A breach of the Subcontract Articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "First-tier Subcontracts (Labor Standards)," "Compliance with Davis-Bacon and Related Act Regulations," or "Certification of Eligibility," may be grounds for termination of the Subcontract, and for debarment as a Subcontractor as provided in 29 CFR 5.12.

SUBCONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 8/01 40/03 09/04] [FAR 22.305 - 07/95; 52.222-4 – 7/95 09/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (h) This provision is not applicable to Subcontracts for supplies, materials, or articles ordinarily available in the open market, Subcontracts for transportation by land, air, or water, or for the transmission of intelligence, Subcontracts of \$100,000 or less, Subcontracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a state, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and Johnson Island, and Subcontracts (or portions of Subcontracts) for supplies in connection with which any required services are merely incidental to the Subcontract and do not require substantial employment of laborers or mechanics, exempt under regulations of the Secretary of Labor (29 CFR 5.15), Subcontracts requiring work to be done solely in accordance with the Walsh-Healey Public Contract Act, and Subcontracts for commercial items.
- (i) FAR clause 52.222-4 (Sept 2000) is hereby incorporated by reference in ~~the~~ total, except that:
 - (3) The words "JPL negotiator Subcontracts Manager or JPL's Contracting Officer" shall be substituted for the words "Contracting Officer" wherever they appear;
 - (4) The word "Subcontractor" shall be substituted for the words "Prime Contractor" wherever they appear; and
 - (5) The words "with JPL" shall be substituted for the words "Federal Contract with the same Prime Contractor" wherever they appear.

**SUBCONTRACTOR AND FIRST-TIER SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION
OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A - E CREI- 8/01 10/03-09/04] [FAR 15.403-4 - 10/00; 52.215-11 - 10/97; 52.215-12 - 10/97; 52.215-13 - 10/97; 52.215-20 - 10/97; 52.215-21 - 10/97]

(This Article is applicable if either the basic Subcontract or any modification exceeds \$550,000.)

(a) Subcontractor Cost or Pricing Data.

- (6) Whenever the negotiated price of the basic Subcontract, or the negotiated price of any change, or other modification to this Subcontract is expected to exceed \$550,000, the Subcontractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the Subcontract is for a commercial item). Whenever certified cost or pricing data are required, the Subcontractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.

(7) Exceptions to Cost or Pricing Data.

(A)

- (i) Basic Subcontracts. In lieu of submitting cost or pricing data for the basic Subcontract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.
- (ii) Subcontract Modifications. In lieu of submitting cost or pricing data for modifications under this Subcontract, for price adjustments expected to exceed \$550,000 on the date of the agreement on price or the date of the award, whichever is later, the Subcontractor may submit a written request for exception by submitting the information described under paragraph (B), below.
- (iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(B) The relevant part of the following information is to be submitted when requesting an exception:

- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
- (ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:
- a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
 - b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
 - c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government Subcontract, proof that an exception has been granted for the schedule item.
- (iii) Information on modifications of Subcontracts or First-tier Subcontracts for commercial items. If (i) the original Subcontract or First-tier Subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a Subcontract or First-tier Subcontract for a commercial item; and (ii) the modification (to the Subcontract or First-tier Subcontract) is not exempted based on one of these exceptions, then the Subcontractor may provide information to establish that the modification would not change the Subcontract or First-tier Subcontract from a Subcontract or First-tier

Subcontract for the acquisition of a commercial item to a Subcontract or First-tier Subcontract for the acquisition of an item other than a commercial item.

(C) The Offeror/Subcontractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's/Subcontractor's determination of the prices to be offered in the catalog or marketplace.

(b) First-tier Subcontractor Cost or Pricing Data.

(8) Before awarding any First-tier Subcontract expected to exceed \$550,000 when entered into, or before pricing any First-tier Subcontract modification involving a pricing adjustment expected to exceed \$550,000, the Subcontractor shall require the First-tier Subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the First-tier Subcontract or modification is eligible for an exception listed in paragraph (a), above.

(9) The requirement for obtaining certified cost or pricing data with respect to any First-tier Subcontract change or other modification does not apply to any First-tier Subcontract change or modification, at any tier, where this Subcontract is a firm fixed-price or firm fixed-price with escalation Subcontract unless such change or other modification results from a Subcontract change or other modification to this Subcontract, nor does it apply to a First-tier Subcontract change or other modification, at any tier, where this Subcontract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Subcontract.

(10) The Subcontractor shall require the First-tier Subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the First-tier Subcontract or First-tier Subcontract modification.

(11) In each First-tier Subcontract that exceeds \$550,000 when entered into, the Subcontractor shall insert either:

(A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the First-tier Subcontract; or

(B) The substance of the clause at FAR 52.215-13, "First-tier Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

(12) If any price, including profit or fee, negotiated in connection with this Subcontract, or any cost reimbursable under this Subcontract, was increased by any significant amount because (i) the Subcontractor or a First-tier Subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a First-tier Subcontractor or prospective First-tier Subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Subcontract shall be modified to reflect the reduction.

(13) Any reduction in the Subcontract price under paragraph (1) above due to defective data from a prospective First-tier Subcontractor that was not subsequently awarded the First-tier Subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual First-tier Subcontract or (ii) the actual cost to the Subcontractor, if there was no First-tier Subcontract, was less than the prospective First-tier Subcontract cost estimate submitted by the Subcontractor; provided, that the actual First-tier Subcontract price was not itself affected by defective cost or pricing data.

(14)

(A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:

- (i) The Subcontractor or First-tier Subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
- (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Subcontractor or First-tier Subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
- (iii) The Subcontract was based on an agreement about the total cost of the Subcontract and there was no agreement about the cost of each item procured under the Subcontract.

The Subcontractor or First-tier Subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(B)

- (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Subcontract price reduction if:
 - a. The Subcontractor certifies to the Subcontracting Officer that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - b. The Subcontractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
 - a. The understated data were known by the Subcontractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data or ~~The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or~~
 - b. The Government proves that the facts demonstrate that the Subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

~~(4) In the event of a disagreement between the Contracting Officer and the Contractor with respect to a question of fact involved in the Contracting Officer's determination to reduce the price of this Contract, the Contractor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute to the extent that it may be entitled to do so under the provisions of the Prime Contract.~~

(d) If any reduction in the Subcontract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Subcontractor's defective pricing including:

- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
- (2) A penalty equal to the amount of the overpayment, if the Subcontractor or First-tier Subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

SUBCONTRACTOR EMPLOYMENT OF JPL EMPLOYEES' CHILDREN AND RELATIVES (SUBCONTRACTOR'S EMPLOYEES IN RESIDENCE AT JPL)

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M – 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

(e) When work under this Subcontract is to be performed at any JPL-controlled facility, the Subcontractor agrees to require applicants for such work, as part of the application process, to identify any relatives they know to be employed at JPL. The Subcontractor also agrees to notify the cognizant Subcontracts Manager prior to hiring an applicant who so identifies a relative. The Subcontractor agrees to abide by JPL's determination as to whether the applicant may be assigned to a particular JPL organization.

(f) The term "relatives" means parents, stepparents, grandparents, sisters, brothers, spouse/same-sex-domestic-partner, children, stepchildren, grandchildren, aunts, uncles, nieces, nephews, legal wards, and spouse's parents, grandparents, sisters and brothers.

SUBCONTRACTOR RECRUITING ACTIVITY

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC – 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

Except as may be specifically authorized by JPL in writing, during the performance of this Subcontract the Subcontractor shall refrain from engaging in any activity related to employment recruiting on any of the premises of JPL.

SUBCONTRACTS

[LH/T&M, T&MC – 10/03] [FAR 52.243-3 – 09/00]

(a) No subcontract shall be made by the Contractor for the furnishing of any of the work herein contracted for without the prior written consent or approval of JPL.

(b) No subcontract placed under this Contract shall provide for payment on a cost plus a percentage of cost basis, and any fee payable under cost reimbursement subcontracts shall not exceed the fee limitations in FAR 15.404-4.

(c) Unless the consent or approval specifically provides otherwise, consent by JPL to any subcontract shall not constitute a determination (i) of the acceptability of any subcontract terms or conditions, (ii) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (iii) to relieve the Contractor of any responsibility for performing this Contract.

SUBCONTRACTS – LABOR STANDARDS

[T&MC, FPC – 10/03]

(Work performed outside the United States is exempt from the requirements of this Article.)

(a) The Contractor or subcontractor shall insert in any subcontracts the Articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act – Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding of Funds," "Subcontracts (Labor Standards)," "Contract Termination – Debarment," "Disputes Concerning Labor Standards," "Compliance with Davis-Bacon and Related Act Regulations," and "Certification of Eligibility," and such other Articles as the Institute may by appropriate instructions require, and also a clause requiring the subcontractors to include these Articles in any lower-tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all the Contract Articles cited above.

(a)

(1) Within 14 days after award of the Contract, the Contractor shall deliver to JPL a completed "Incorporation of Labor Standards Provisions," form JPL 3557, for each subcontract, including the subcontractor's signed and dated acknowledgment that the Articles set forth in paragraph (a) of this Article have been included in the subcontract.

(1) Within 14 days after the award of any subsequently awarded subcontract, the Contractor shall deliver to JPL an updated completed form JPL 3557 for such additional subcontract.

SUBCONTRACTS FOR COMMERCIAL ITEMS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 10/03] [FAR 52.244-6 – 05/02]

(a) Definition:

(1) "Commercial item," as used in this Article, has the meaning contained in the "Definitions" Article and in FAR 52.202-1, "Definitions."

(1) "Subcontract," as used in this Article, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Contract.

(e)

~~(1) The Contractor shall insert the following clauses in subcontracts for commercial items:~~

~~(i) 52.219-8, Utilization of Small Business Concerns (Oct 200) (15 U.S.C. 637(d)(2)(3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceed \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.~~

~~(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).~~

~~(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));~~

~~(iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).~~

~~(v) 52.247-64, Preference for Privately Owned U.S. Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).~~

~~(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.~~

~~(d) The Contractor shall include the terms of this Article, including this paragraph (d), in subcontracts awarded under this contract.~~

SUPERINTENDENCE BY THE CONTRACTSUBCONTRACTOR

[T&MC, FPC – ~~10/0309/04~~–F] [FAR 52.236-6 - 04/84]

At all times during performance of this ~~ContractSubcontract~~ and until the work is completed and accepted, the ~~ContractSubcontract~~or shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to JPL and has authority to act for the ~~ContractSubcontractor~~. The ~~ContractSubcontract~~or shall submit the name of this representative to JPL prior to commencement of site work.

SUSPENSION OF WORK

[T&MC, FPC – ~~10/0309/04~~–F] [FAR 52.242-14 - 04/84]

- (a) JPL may order the ~~ContractSubcontract~~or, in writing, to suspend, delay, or interrupt all or any part of the work of this ~~ContractSubcontract~~ for the period of time that JPL determines appropriate for the convenience of JPL or the Government.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (i) by an act of JPL in the administration of this ~~ContractSubcontract~~, or (ii) by JPL's failure to act within the time specified in this ~~ContractSubcontract~~ (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this ~~ContractSubcontract~~ (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the ~~ContractSubcontract~~ modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the ~~ContractSubcontractor~~, or for which an equitable adjustment is provided for or excluded under any other term or condition of this ~~ContractSubcontract~~.
- (c) A claim under this Article shall not be allowed (i) for any costs incurred more than 20 days before the ~~ContractSubcontract~~or shall have notified JPL in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the ~~ContractSubcontract~~.

TECHNICAL DIRECTION

[~~CT, FP-NR&D, LH/T&M, T&MC, FPC, CREI, A-EA - E, FPIFP&RDI, REL-RSA~~ – ~~10/0309/04~~] [NFS ~~18242-70~~ – ~~05/021852.242-70~~ – ~~09/03~~]

- (a) Performance of the work under this ~~contractSubcontract~~ is subject to the written technical direction of the Contract Technical Manager (CTM). "Technical direction" means a directive to the ~~ContractSubcontract~~or that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar

instruction to the ~~ContractSubcontractor~~. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements of this ~~contractSubcontract~~.

- (b) The CTM does not have the authority to, and shall not, issue any instruction purporting to be technical direction that:
 - (1) Constitutes an assignment of additional work outside the statement of work;
 - (2) Constitutes a change as defined in the changes clause;
 - (3) Constitutes a basis for any increase or decrease in the total estimated ~~contractSubcontract~~ cost, the fixed fee (if any), or the time required for ~~contractSubcontract~~ performance;
 - (4) Changes any of the expressed terms, conditions, or specifications of the ~~contractSubcontract~~; or
 - (5) Interferes with the ~~contractSubcontractor~~'s rights to perform the terms and conditions of the ~~contractSubcontract~~.
- (c) All technical direction shall be issued in writing by the CTM.
- (d) The ~~ContractSubcontractor~~ shall proceed promptly with the performance of technical direction duly issued by the CTM in the manner prescribed by this clause and within the CTM's authority. If, in the ~~ContractSubcontractor~~'s opinion, any instruction or direction by the CTM falls within any of the categories defined in paragraph (b) of this clause, the ~~ContractSubcontractor~~ shall not proceed but shall notify the ~~Contracting OfficerJPL Subcontracts Manager~~ in writing within 5 working days after receiving it and shall request the ~~Subcontracts ManagerContracting Officer~~ to take action as described in this clause. Upon receiving this notification, the ~~Subcontracts ManagerContracting Officer~~ shall either issue an appropriate ~~contractSubcontract~~ modification within a reasonable time or advise the ~~ContractSubcontractor~~ in writing within 30 days that the instruction or direction is--
 - (1) Rescinded in its entirety; or
 - (2) Within the requirements of the ~~contractSubcontract~~ and does not constitute a change under the changes clause of the ~~contractSubcontract~~, and that the ~~ContractSubcontractor~~ should proceed promptly with its performance.
- (e) Any action(s) taken by the ~~contractSubcontractor~~ in response to any direction given by any person other than the ~~Subcontracts ManagerContracting Officer~~ or the CTM shall be at the ~~ContractSubcontractor~~'s risk.

TEMPORARY UTILITIES AND UTILITY TIE-INS

[T&MC, FPC – ~~40/0309/04~~]

- (a) Water. All reasonably required amounts of water will be made available to the ~~ContractSubcontractor~~ by JPL from existing water system outlets and supplies. Any pumping facilities, temporary connections, or piping required to transmit the water shall be furnished by the ~~ContractSubcontractor~~, subject to the approval of JPL, and shall be removed in a satisfactory manner, at the ~~ContractSubcontractor~~'s expense, when the job is completed.
- (b) Electricity.
 - (1) All reasonable electric current required by the ~~ContractSubcontractor~~ shall be furnished by JPL. All temporary connections for electricity shall be subject to the approval of JPL.
 - (2) All temporary lines will be furnished, installed, connected and maintained by the ~~ContractSubcontractor~~ in a workmanlike manner satisfactory to JPL and shall be removed by the ~~ContractSubcontractor~~ in like manner at its expense prior to completion of the construction.
 - (3) The ~~ContractSubcontractor~~ shall furnish engine-driven welders for required welding power.
- (c) Telephone Service. Unless otherwise provided in this ~~ContractSubcontract~~, telephone service shall be provided by the ~~ContractSubcontractor~~, or, where available, JPL pay telephones may be used.
- (d) Utility Tie-Ins.
 - (1) All tie-ins, modifications, or moving of JPL utilities such as air, power, fire sprinkler systems, water, air-conditioning systems, etc., must be scheduled through JPL and shall be done on Saturdays or Sundays, if required, at no additional cost to JPL.

- (2) Unless otherwise specified in this ~~ContractSubcontract~~, the ~~ContractSubcontractor~~ shall submit schedules to JPL at least 10 calendar days in advance of any building utility outages and off-hour work, and JPL will inform the ~~ContractSubcontractor~~ within seven calendar days of receipt of notification of approval or disapproval of such schedules.
- (e) Water and Utility Usage. The ~~ContractSubcontractor~~ shall provide continuous surveillance of water flow or other utility usage to prevent waste or damage to JPL property.

TERMINATION – LABOR-HOUR/TIME-AND-MATERIAL

[LH/T&M, T&MC – ~~10/0309/041-FI~~ FAR 52.249-6, ALT. IV – 09/96]

- (a) JPL may terminate performance of work under this ~~ContractSubcontract~~ in whole or, from time to time, in part, if:
 - (1) JPL determines that a termination is in the interest of the Institute or the Government.
 - (2) The ~~ContractSubcontractor~~ defaults in performing this ~~ContractSubcontract~~ and fails to cure the default within 10 days (unless extended by JPL) after receiving a JPL notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) JPL shall terminate by delivering to the ~~ContractSubcontractor~~ a Notice of Termination specifying whether termination is for default of the ~~ContractSubcontractor~~ or for convenience of the Institute or the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the ~~ContractSubcontractor~~ was not in default or that the ~~ContractSubcontractor's~~ failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the ~~ContractSubcontractor~~ as set forth in the Article of this ~~ContractSubcontract~~ entitled "Excusable Delays," the rights and obligations of the parties will be the same as if the termination was for the convenience of the Institute or the Government.
- (c) After receipt of a Notice of Termination, and except as directed by JPL, the ~~ContractSubcontractor~~ shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
 - (1) Stop work as specified in the notice.
 - (2) Place no further ~~First-tier S~~subcontracts or orders (referred to as ~~First-tier S~~subcontracts in this Article), except as necessary to complete the continued portion of the ~~ContractSubcontract~~.
 - (3) Terminate all ~~First-tier S~~subcontracts to the extent they relate to the work terminated.
 - (4) Assign to JPL, in the manner and to the extent directed by JPL, all right, title, and interest of the ~~ContractSubcontractor~~ under the ~~First-tier S~~subcontracts terminated, in which case JPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of ~~First-tier S~~subcontracts, the cost of which would be reimbursable in whole or in part, under this ~~ContractSubcontract~~; approval or ratification will be final for purposes of this Article.
 - (6) Transfer title (if not already transferred) and, as directed by JPL, deliver to JPL (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the ~~ContractSubcontract~~ had been completed, would be required to be furnished to JPL, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this ~~ContractSubcontract~~, the cost of which the ~~ContractSubcontractor~~ has been or will be reimbursed under this ~~ContractSubcontract~~.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this ~~ContractSubcontract~~ that is in the possession of the ~~ContractSubcontractor~~ and in which the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by JPL, any property of the types referred to in subparagraph (6) above; provided, however, that the ~~ContractSubcontractor~~ (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be

made by the Institute under this ~~ContractSubcontract~~, credited to the price or cost of the work, or paid in any other manner directed by JPL.

- (d) The ~~ContractSubcontractor~~ shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the ~~ContractSubcontractor~~ within this ~~120-120~~-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of FAR and any corresponding implementing or supplementing provisions in the NFS, the ~~ContractSubcontractor~~ may submit to JPL a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by JPL. The ~~ContractSubcontractor~~ may request JPL to remove those items or enter into an agreement for their storage. Within 15 days, JPL will accept the items and remove them or enter into a storage agreement. JPL may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the ~~ContractSubcontractor~~ shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The ~~ContractSubcontractor~~ shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by JPL upon written request of the ~~ContractSubcontractor~~ within this six- month period. However, if JPL determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the ~~ContractSubcontractor~~ fails to submit the proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the ~~ContractSubcontractor~~ because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) above, the ~~ContractSubcontractor~~ and JPL may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The ~~ContractSubcontract~~ shall be amended, and the ~~ContractSubcontractor~~ paid the agreed amount.
- (h) If the ~~ContractSubcontractor~~ and JPL fail to agree in whole or in part on the amount to be paid because of the termination of work, JPL shall determine, on the basis of information available, the amount, if any, due the ~~ContractSubcontractor~~, and shall pay the amount determined as follows:
 - (1) If the termination is for the convenience of the Institute, include:
 - (A) An amount for direct labor hours (as defined in the Schedule of the ~~ContractSubcontract~~) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the ~~ContractSubcontractor~~;
 - (B) An amount (computed under the provisions for payment of materials or other direct costs) for material expenses or other direct costs incurred before the effective date of termination, not previously paid to the ~~ContractSubcontractor~~;
 - (C) An amount for labor and material expenses and other direct costs computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by JPL; however, the ~~ContractSubcontractor~~ shall discontinue these expenses as rapidly as practicable;
 - (D) If not included in (A), (B), or (C) above, the cost of settling and paying termination settlement proposals under terminated ~~First-tier Ss~~subcontracts that are properly chargeable to the terminated portion of the ~~ContractSubcontract~~; and
 - (E) The reasonable costs of settlement of the work terminated, including:
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of ~~First-tier Ss~~subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.
 - (2) If the termination is for default of the ~~ContractSubcontractor~~, include the amounts computed under (1) above but omit:
 - (A) Any amount for preparation of the ~~ContractSubcontractor~~'s termination settlement proposal; and

- (B) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by JPL.
- (i) The cost principles and procedures in Part 31 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this ~~ContractSubcontract~~, shall govern all costs claimed, agreed to, or determined under this Article.
- (j) The determination by JPL of the amount, if any, due the ~~ContractSubcontractor~~ by reason of the termination of this ~~ContractSubcontract~~, as provided in paragraphs (f) or (h) above or paragraph (k) below of this Article, shall not be final and conclusive with regard to the ~~ContractSubcontractor~~'s right to pursue any available legal remedy in the event the ~~ContractSubcontractor~~ disagrees with such determination, provided that, if the ~~ContractSubcontractor~~ has failed to submit its claim within the time provided in paragraph (f) above, and has failed to request an extension of such time, the determination of JPL as to the amount due shall be final and conclusive.
- (k) In arriving at the amount due the ~~ContractSubcontractor~~ under this Article, there shall be deducted:
- (1) All unliquidated advance or other payments to the ~~ContractSubcontractor~~, under the terminated portion of this ~~ContractSubcontract~~;
 - (2) Any claim which the Institute has against the ~~ContractSubcontractor~~ under this ~~ContractSubcontract~~; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the ~~ContractSubcontractor~~ or sold under this Article and not recovered by or credited to the Institute.
- (l) If the termination is partial, the ~~ContractSubcontractor~~ may file with the Institute a proposal for an equitable adjustment of the price(s) for the continued portion of the ~~ContractSubcontract~~. The Institute shall make any equitable adjustment agreed upon. Any proposal by the ~~ContractSubcontractor~~ for an equitable adjustment under this Article shall be requested within 90 days from the effective date of termination, unless extended in writing by JPL.
- (m)
- (1) The Institute may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the ~~ContractSubcontractor~~ for the terminated portion of the ~~ContractSubcontract~~, if the Institute believes the total of these payments will not exceed the amount to which the ~~ContractSubcontractor~~ will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the ~~ContractSubcontractor~~ shall repay the excess to the Institute upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the ~~ContractSubcontractor~~ to the date the excess is repaid to the Institute. Interest shall not be charged on any excess payment due to a reduction in the ~~ContractSubcontractor~~'s termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Institute because of the circumstances.

TIMEKEEPING AND PAYMENTS

[LH/T&M, T&MC ~~4/00 10/03/09/04~~ - ~~F~~] FAR 52.232-7 - 12/02, ALT. I - 03/00

- (a) General. The ~~ContractSubcontractor~~ shall submit invoices to JPL as indicated in the Schedule and discussed below. Payment to the ~~ContractSubcontractor~~ for hours worked by the ~~ContractSubcontractor~~ employees listed in the Schedule (or ~~ContractSubcontract~~ Work Order) (or if there is no listing of personnel by name in the Schedule, then by personnel of the classification listed in the Schedule) will be based on the actual hours worked by such personnel in accordance with paragraph (b) below. Reimbursement of the ~~ContractSubcontractor~~ for travel and related expenses or allowances shall be allowable only if stated in the Schedule and shall be subject to the provisions below.
- (b) Timekeeping.
- (1) For work to be performed for JPL at a JPL location, the ~~ContractSubcontractor~~ is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the ~~workshift~~ work shift that are worked by its employees. Working time will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time, whichever is later. Mealtime deductions shall be appropriately determined by the ~~ContractSubcontractor~~. The

ContractSubcontractor is responsible for establishing a process that monitors its personnel leaving JPL premises during the workday.

- (2) For work performed at a location other than JPL, the ContractSubcontractor is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the workshiftwork shift that are worked by its employees. Unless otherwise provided for in this ContractSubcontract, the ContractSubcontractor shall maintain timekeeping records in accordance with form JPL 1725, "Minimum Timekeeping Requirements for Time-and-Material or Labor-Hour Type Procurements to be Performed at Off-Lab Facilities."
- (3) Overtime is defined as work performed in excess of eight hours in one day or forty hours in one workweek or in accordance with applicable State and Federal Laws and Regulations.

(c) Hourly Rate.

- (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule or ContractSubcontract Work Order by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Working time will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time. Meal time deductions will be as determined by the ContractSubcontractor. At the end of the day, working time will not be computed beyond the end of the designated approved shift unless overtime is authorized. Invoices shall be submitted weekly, (unless another interval is specified in the Schedule) to the attention of the JPL Accounting Section. Invoices shall contain the accuracy representation as required by JPL, and shall be submitted by one of the authorized representatives specified in the Schedule. Promptly after receipt of each invoice, the Institute shall, except as otherwise provided in this ContractSubcontract, and subject to the terms of (g) below, pay the invoice as approved by JPL.
- (2) Unless otherwise prescribed in the Schedule, the Institute shall withhold five percent of the amounts due under this ContractSubcontract, or such other amount which that the Institute considers necessary to protect the interest of the Institute and the Government, but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the ContractSubcontractor as provided in paragraph (h) below.
- (3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the ContractSubcontractor having performed work on an overtime basis. If the Schedule or ContractSubcontract Work Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by JPL.

(d) Materials, First-tier SSubcontracts, and Other Direct Costs.

- (1) Allowable costs of direct materials or other direct costs authorized in the Schedule shall be determined by JPL in accordance with Subpart 31.2 of FAR in effect on the date of this contractSubcontract and any corresponding implementing or supplementing provisions in the NFS. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials and other direct costs in accordance with the ContractSubcontractor's usual accounting practices consistent with Subpart 31.2 of FAR and any corresponding implementing or supplementing provisions in the NFS. The ContractSubcontractor shall be reimbursed for items and services purchased directly for the ContractSubcontract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this Article, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product. The ContractSubcontract shall support all material or other direct costs claimed by submitting copies of paid invoices or storeroom requisitions, or by other substantiation acceptable to JPL.
- (2) The ContractSubcontractor may include reasonable and allocable material handling costs in the charge for material to the extent that they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including when appropriate, general and administrative expense allocated to direct materials in accordance with the ContractSubcontractor's usual accounting practices consistent with Subpart 31.2 of the FAR.
- (3) JPL will reimburse the ContractSubcontractor for supplies and services purchased directly for the contractSubcontract when the ContractSubcontractor:

- (A) Has made payments of cash, checks, or other forms of payment for these purchased supplies or services; or
 - (B) Will make these payments determined due:
 - (i) In accordance with the terms and conditions of a First-tier Subcontract or invoice; and
 - (ii) Ordinarily within 30 days of the submission of the ContractSubcontractor's payment request to JPL
- (4)
- (A) JPL will reimburse the ContractSubcontractor for costs of First-tier Subcontracts that are authorized under the First-tier Subcontracts clause of this contractSubcontract, provided that the costs are consistent with paragraph (b)(5) below.
 - (C) JPL will limit reimbursable costs in connection with First-tier Subcontracts to the amounts paid for supplies and services purchased directly for the contractSubcontract when the ContractSubcontractor has made or will make payments determined due of cash, checks, or other forms of payment to the First-tier Subcontractor:
 - (i) In accordance with the terms and conditions of a First-tier Subcontract or invoice; and
 - (iii) Ordinarily within 30 days of the submission of the ContractSubcontractor's payment request to JPL
 - (D) JPL will not reimburse the ContractSubcontractor for any costs arising from the letting, administration, or supervision of performance of the First-tier Subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) above.
- (5) To the extent able, the ContractSubcontractor shall:
- (A) Obtain materials at the most advantage prices available with due regard to securing prompt delivery of satisfactory materials; and
 - (E) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the ContractSubcontractor shall promptly notify the JPL Subcontract ManagerSubcontracts Manager and give the reasons. The ContractSubcontractor shall give credit to JPL for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the ContractSubcontractor, or would have accrued except for the fault or neglect of the ContractSubcontractor. The ContractSubcontractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the ContractSubcontractor, or lost through fault of JPL.
- (6) If the nature of the work to be performed requires the ContractSubcontractor to furnish material that the ContractSubcontractor regularly sells to the general public in the normal course of business, the price to be paid for such material, notwithstanding the other requirements of this paragraph (b), shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Institute, provided that in no event shall such price be in excess of the ContractSubcontractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.
- (e) Total Cost. It is estimated that the total cost to the Institute for the performance of this ContractSubcontract shall not exceed the ceiling price set forth in the Schedule and the ContractSubcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this ContractSubcontract within such ceiling price. If at any time the ContractSubcontractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this ContractSubcontract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 75% of the ceiling price in the Schedule, the ContractSubcontractor shall notify JPL, giving a revised estimate of the total price to the Institute for performing this ContractSubcontract with supporting reasons and documentation. If at any time during performance of this ContractSubcontract, the ContractSubcontractor has reason to believe that the total price to the Institute for performing this ContractSubcontract will be substantially greater or less than the then stated ceiling price, the ContractSubcontractor shall so notify JPL, giving a revised estimate of the total price for performing this ContractSubcontract, with supporting reasons and documentation. If at any time during performance of this ContractSubcontract, the Institute has reason to believe that the work to be required in performing this ContractSubcontract will be substantially greater or less than the stated ceiling price, JPL will so advise the ContractSubcontractor, giving the then revised estimate of the total amount of effort to be required under the ContractSubcontract.

- (f) Ceiling Price. The Institute shall not be obligated to pay the ~~Contract~~Subcontractor any amount in excess of the ceiling price in the Schedule, and the ~~Contract~~Subcontractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until JPL shall have notified the ~~Contract~~Subcontractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this ~~Contract~~Subcontract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the ~~Contract~~Subcontractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material or other direct costs had been incurred after the increase in the ceiling price. Directions, orders, notices, requests and the like issued by JPL pursuant to the "Changes" Article or any other provision of this ~~Contract~~Subcontract shall not be considered an authorization to the ~~Contract~~Subcontractor to exceed the ceiling price set forth in the Schedule in the absence of a statement in a Unilateral Modification, or other ~~Contract~~Subcontract modification, increasing the ceiling price.
- (g) Audit. At any time before final payment under this ~~Contract~~Subcontract, JPL may audit or have audited the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers that are found by JPL not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the ~~Contract~~Subcontractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the ~~Contract~~Subcontractor with all terms of this ~~Contract~~Subcontract (including, without limitation, terms relating to patents and terms of paragraphs (h) and (i) below), the Institute shall promptly pay any balance due the ~~Contract~~Subcontractor. The completion invoice or voucher, and substantiating material, shall be submitted by the ~~Contract~~Subcontractor as promptly as practicable following completion of the work under this ~~Contract~~Subcontract, but in no event later than six months (or such longer period as JPL may approve in writing) from the date of completion.
- (h) Release. The ~~Contract~~Subcontractor, and each assignee under an assignment entered into under this ~~Contract~~Subcontract and in effect at the time of final payment under this ~~contract~~Subcontract, shall execute and deliver, at the time of and as a condition precedent to final payment under this ~~Contract~~Subcontract, a release discharging the Institute, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this ~~Contract~~Subcontract, subject only to the following exceptions:
- (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the ~~Contract~~Subcontractor.
 - (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the ~~Contract~~Subcontractor to third parties arising out of performing this ~~Contract~~Subcontract, that are not known to the ~~Contract~~Subcontractor on the date of the execution of the release, and of which the ~~Contract~~Subcontractor gives notice in writing to JPL not more than six years after the date of the release or the date of any notice to the ~~Contract~~Subcontractor that the Institute is prepared to make final payment, whichever is earlier.
 - (3) Claims for reimbursement of costs (other than expenses of the ~~Contract~~Subcontractor by reason of its indemnification of the Institute or the Government against patent liability), including reasonable incidental expenses, incurred by the ~~Contract~~Subcontractor under the terms of this ~~Contract~~Subcontract relating to patents.
- (i) Refunds. The ~~Contract~~Subcontractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the ~~Contract~~Subcontractor or any assignee, that arise under the materials or other direct costs portion of this ~~Contract~~Subcontract and for which the ~~Contract~~Subcontractor has received reimbursement, shall be paid by the ~~Contract~~Subcontractor to the Institute. The ~~Contract~~Subcontractor and each assignee, under an assignment entered into under this ~~Contract~~Subcontract and in effect at the time of final payment under this ~~Contract~~Subcontract, shall execute and deliver, at the time of and as a condition precedent to final payment under this ~~Contract~~Subcontract, an assignment to the Institute of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to JPL.
- (j) Interim Payments
- (1) Interim payments made prior to the final payment under the ~~contract~~Subcontract are ~~contract~~Subcontract financing payments. ~~Contract~~Subcontract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act.
 - (2) Interim payments for ~~contract~~Subcontract financing will be made on the 30th day after JPL receives a proper payment request. In the event that the Institute requires an audit or other review of a specific payment

~~request to ensure compliance with the terms and conditions of the contractSubcontract, JPL is not compelled to make payment by the specified due date.~~

~~General: The Contractor shall submit invoices to JPL as indicated in the Schedule and discussed below. Payment to the Contractor for hours worked by the Contractor employees listed in the Schedule (or Contract Work Order) (or if there is no listing of personnel by name in the Schedule, then by personnel of the classification listed in the Schedule) will be based on the actual hours worked by such personnel in accordance with paragraph (b) below. Reimbursement of the Contractor for travel and related expenses or allowances shall be allowable only if stated in the Schedule and shall be subject to the provisions below.~~

~~(b) Timekeeping.~~

- ~~(1) For work to be performed for JPL at a JPL location, the Contractor is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the workshift that are worked by its employees. Working time will be calculated in tenth of an hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time, whichever is later. Mealtime deductions shall be appropriately determined by the Contractor. The Contractor is responsible for establishing a process that monitors its personnel leaving JPL premises during the workday.~~
- ~~(2) For work performed at a location other than JPL, the Contractor is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the workshift that are worked by its employees. Unless otherwise provided for in this Contract, the Contractor shall maintain timekeeping records in accordance with form JPL 1725, "Minimum Timekeeping Requirements for Time and Material or Labor Hour Type Procurements to be Performed at Off Lab Facilities."~~
- ~~(3) Overtime is defined as work performed in excess of eight hours in one day or forty hours in one workweek or in accordance with applicable State and Federal Laws and Regulations.~~

~~(c) Hourly Rate.~~

- ~~(1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule or Contract Work Order by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Working time will be calculated in tenth of an hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time. Meal time deductions will be as determined by the Contractor. At the end of the day, working time will not be computed beyond the end of the designated approved shift unless overtime is authorized. Invoices shall be submitted weekly, (unless another interval is specified in the Schedule) to the attention of the JPL Accounting Section. Invoices shall contain the accuracy representation as required by JPL, and shall be submitted by one of the authorized representatives specified in the Schedule. Promptly after receipt of each invoice, the Institute shall, except as otherwise provided in this Contract, and subject to the terms of (g) below, pay the invoice as approved by JPL.~~
- ~~(2) Unless otherwise prescribed in the Schedule, the Institute shall withhold five percent of the amounts due under this Contract, or such other amount which the Institute considers necessary to protect the interest of the Institute and the Government, but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (h) below.~~
- ~~(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If the Schedule or Contract Work Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by JPL.~~

~~(d) Materials, Subcontracts and Other Direct Costs.~~

- ~~(1) Allowable costs of direct materials or other direct costs authorized in the Schedule shall be determined by JPL in accordance with Subpart 31.2 of FAR in effect on the date of this contract and any corresponding implementing or supplementing provisions in the NFS. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials and other direct costs in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of FAR and any corresponding implementing or supplementing provisions in the NFS. The Contractor shall be reimbursed for items and services purchased directly for the Contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this Article, are those materials which enter directly into the end product, or which are used or consumed directly in connection~~

~~with the furnishing of the end product. The Contract shall support all material or other direct costs claimed by submitting copies of paid invoices or storeroom requisitions, or by other substantiation acceptable to JPL.~~

~~(2) The cost of subcontracts that are authorized under the "Subcontracts" Article of this Contract shall be reimbursable costs under this Article; provided, that the costs are consistent with subparagraph (3) below. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor in the same manner as for items and services purchased directly for the Contract under subparagraph (1) above; however, this requirement shall not apply to a Contractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under (c)(1) above.~~

~~(3) To the extent able, the Contractor shall:~~

~~(A) Obtain materials or other direct cost items at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and~~

~~(B) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify JPL and give the reason. Credit shall be given to the Institute for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of JPL, shall not be deducted from gross costs.~~

~~(4) If the nature of the work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding (d)(1) above, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Institute or the Government; provided, that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.~~

~~(e) Total Cost. It is estimated that the total cost to the Institute for the performance of this Contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this Contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material or other direct costs that will accrue in performing this Contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 75% of the ceiling price in the Schedule, the Contractor shall notify JPL, giving a revised estimate of the total price to the Institute for performing this Contract with supporting reasons and documentation. If at any time during performance of this Contract, the Contractor has reason to believe that the total price to the Institute for performing this Contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify JPL, giving a revised estimate of the total price for performing this Contract, with supporting reasons and documentation. If at any time during performance of this Contract, the Institute has reason to believe that the work to be required in performing this Contract will be substantially greater or less than the stated ceiling price, JPL will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the Contract.~~

~~(f) Ceiling Price. The Institute shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until JPL shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this Contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material or other direct costs had been incurred after the increase in the ceiling price. Directions, orders, notices, requests and the like issued by JPL pursuant to the "Changes" Article or any other provision of this Contract shall not be considered an authorization to the Contractor to exceed the ceiling price set forth in the Schedule in the absence of a statement in a Unilateral Modification, or other Contract modification, increasing the ceiling price.~~

~~(g) Audit. At any time before final payment under this Contract, JPL may audit or have audited the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by JPL not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this Contract (including, without~~

~~limitation, terms relating to patents and terms of paragraphs (h) and (i) below), the Institute shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this Contract, but in no event later than six months (or such longer period as JPL may approve in writing) from the date of completion.~~

- ~~(h) Release. The Contractor, and each assignee under an assignment entered into under this Contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Contract, a release discharging the Institute, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Contract, subject only to the following exceptions:~~
- ~~(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.~~
 - ~~(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this Contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to JPL not more than six years after the date of the release or the date of any notice to the Contractor that the Institute is prepared to make final payment, whichever is earlier.~~
 - ~~(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Institute or the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this Contract relating to patents.~~
- ~~(i) Refunds. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials or other direct costs portion of this Contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Institute. The Contractor and each assignee, under an assignment entered into under this Contract and in effect at the time of final payment under this Contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Contract, an assignment to the Institute of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to JPL.~~

TOXIC CHEMICAL RELEASE REPORTING

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, ~~A-EA - E, RSA - 40/0309/04~~ - ~~F~~] [FAR 52.223-14 - 10/~~96~~ 00]

(This Article is applicable to all ~~contract~~Subcontracts where the value of the ~~contract~~Subcontract and all options at the time of award is expected to exceed \$100,000.)

By entering into this ~~Contract~~Subcontract, the ~~Contract~~Subcontractor agrees to abide by and accept all of the Terms and Conditions found in the Federal Acquisition Regulations (FAR) at 52.223-14.

TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, ~~A-EA - E - 40/0309/04~~ - ~~F~~] [NFS 1852.227-87 - 04/89]

(This Article applies to ~~contract~~Subcontracts and ~~First-tier S~~ubcontracts in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130, or the Export Administration Regulations (EAR), 15 CFR PARTS 730-799 in accordance with the NASA Export Control Program.)

- (a) In the cooperative Space Station Freedom Program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data ~~which that~~ are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station ~~contract~~Subcontractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR).
- (b) The ~~Contract~~Subcontractor agrees, when specifically directed in writing by the JPL ~~Subcontract~~ManagerSubcontracts Manager or an authorized JPL representative under this ~~Contract~~Subcontract, acting upon the written direction of the NASA Contracting Officer or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by NASA through the JPL ~~Subcontract~~ManagerSubcontracts Manager or an authorized JPL representative under this ~~Contract~~Subcontract.

- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the ~~ContractSubcontract~~ to transfer in accordance with paragraph (b), above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.
- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the ~~ContractSubcontract~~ or any ~~First-tier S~~subcontractors as set forth in the "Rights in Data" Article of this ~~ContractSubcontract~~, nor the protection of any proprietary technical data ~~which that~~ may be available to the ~~ContractSubcontract~~ or any ~~First-tier S~~subcontractor under that Article.
- (e) The ~~ContractSubcontract~~ agrees to include this Article, including this paragraph (e), in all ~~First-tier S~~subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

UNION DATA FOR ON-SITE ~~CONTRACTSUBCONTRACTORS~~

[CT, FP-NR&D, FP-R&D, T&MC, ~~LH-T&MLH/T&M~~ – 10/0309/04]

(This Article applies [i] to any time-and-material or labor-hour ~~contractSubcontract~~ where the work is performed at a JPL-controlled facility and [ii] to any other ~~contractSubcontract~~ for which any ~~contractSubcontract~~ personnel work in residence at a JPL-controlled facility. Work performed outside the United States is exempt from the requirements of this Article.)

The ~~ContractSubcontract~~ shall provide JPL-requested union information, including union information pertaining to its ~~First-tier S~~subcontractors, if any, on the "Request for Union Data Regarding On-Site ~~ContractSubcontractors~~ and Their ~~First-tier S~~subcontractors," set forth below. A copy of this form (sample shown below), filled in, shall be returned to the cognizant ~~Subcontract ManagerSubcontracts Manager~~'s attention. Any changes in the data, such as the addition of a new union ~~First-tier S~~subcontractor, shall be provided to JPL through timely resubmission of the following form:

REQUEST FOR UNION DATA REGARDING ON-SITE ~~CONTRACTSUBCONTRACTORS~~ AND THEIR ~~FIRST-TIER S~~SUBCONTRACTORS

1. Date:
2. ~~ContractSubcontract~~ number:
3. Scheduled ~~ContractSubcontract~~ completion date:
4. ~~ContractSubcontract~~ or name:
5. Total number of on-site personnel:
6. Cognizant ~~Subcontract ManagerSubcontracts Manager~~:
7. ~~First-tier S~~subcontractors under this ~~ContractSubcontract~~ with union personnel working on-site at JPL-controlled facilities.

_____ Number of ~~First-tier S~~subcontractor Personnel at JPL

Site:

First-tier S subcontractor	_____ Total Personnel	No. of
Union Personnel		

8. Brief description of scope of work and location of work site sufficient to locate the union ~~contractSubcontract~~ and ~~First-tier S~~subcontract workers.

9.
 - a. Local union name: _____ Local No. (if any): _____
 - b. Number of on-site ~~ContractSubcontract~~/~~First-tier S~~subcontractor personnel represented:
 - c. Name, phone number and address of business agent representing the local union:
 - (1) Name: _____
 - (2) Phone: _____
 - (3) Address: _____
 - d. Expiration date of labor agreement: _____
 - e.
 - (1) If applicable, the employer association responsible for negotiating each agreement for ~~ContractSubcontract~~/~~First-tier S~~subcontractor: _____
 - (2) If applicable, the names of ~~ContractSubcontract~~'s/~~First-tier S~~subcontractor's local employer representatives who take part in such negotiations: _____
10. Name, phone number and address of the ~~ContractSubcontract~~'s ~~First-tier S~~subcontractor's representative who is responsible for handling labor relations/human resources issues: _____

- a. Name:
- b. Phone:
- c. Address:

(Note: For items 8, 9, and 10, provide for each union and also for each on-site ~~First-tier S~~subcontract, as applicable.)

USE OF RURAL AREA SMALL BUSINESSES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, ~~RSA – 40/0309/04~~] [NFS 1852.219-74 – 09/90]

(Work performed outside the United States is exempt from the requirements of this Article.)

Incorporate by reference NFS 1852.219-74, Use of Rural Area Small Businesses.

UTILIZATION OF SMALL, ~~SMALL DISADVANTAGED, OR WOMEN OWNED SMALL~~ BUSINESS CONCERNS

[CT, CIS, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, ~~RSA – 4/99 40/0309/04~~] [FAR 52.219-8 – ~~6/97~~ 10/00]

(This Article is applicable when the ~~ContractSubcontract~~ amount is expected to be over \$100,000, unless (i) a personal services ~~contractSubcontract~~ is contemplated, (ii) a commercial items or services ~~contractSubcontract~~, or (iii) the ~~ContractSubcontract~~ together with all its ~~First-tier S~~subcontracts is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.)
Incorporate by reference FAR 52.219-8, Utilization of Small, ~~small disadvantaged, or women owned small~~ Business ~~Concerns~~.

WARRANTY OF CONSTRUCTION

[T&MC, FPC – ~~40/0309/04~~] [FAR 52.246-21 – 03/94]

- (a) In addition to any other warranties in this ~~ContractSubcontract~~, the ~~ContractSubcontractor~~ warrants, except as provided in paragraph (i) of this Article, that work performed under this ~~ContractSubcontract~~ conforms to the ~~ContractSubcontract~~ requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the ~~ContractSubcontractor~~ or any ~~First-tier S~~subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of one year from the date of final acceptance of the work. If JPL takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date JPL takes possession.
- (c) The ~~ContractSubcontractor~~ shall remedy at the ~~ContractSubcontractor~~'s expense any failure to conform, or any defect. In addition, the ~~ContractSubcontractor~~ shall remedy at the ~~ContractSubcontractor~~'s expense any damage to Institute or Government owned or controlled real or personal property, when that damage is the result of:
 - (1) The ~~ContractSubcontractor~~'s failure to conform to ~~ContractSubcontract~~ requirements; or
 - (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) The ~~ContractSubcontractor~~ shall restore any work damaged in fulfilling the terms and conditions of this Article. The ~~ContractSubcontractor~~'s warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.
- (e) JPL shall notify the ~~ContractSubcontractor~~, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the ~~ContractSubcontractor~~ fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, JPL shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the ~~ContractSubcontractor~~'s expense.
- (g) With respect to all warranties, express or implied, from ~~First-tier S~~subcontractors, manufacturers, or suppliers for work performed and materials furnished under this ~~ContractSubcontract~~, the ~~ContractSubcontractor~~ shall:
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed, in writing, for the benefit of JPL or the Government, if directed by JPL; and
 - (3) Enforce all warranties for the benefit of JPL or the Government, if directed by JPL.
- (h) In the event the ~~ContractSubcontractor~~'s warranty under paragraph (b) of this Article has expired, JPL or the Government may bring suit at its expense to enforce a ~~First-tier S~~subcontractor's, manufacturers, or supplier's warranty.

- (i) Unless a defect is caused by the negligence of the ~~ContractSubcontractor~~ or ~~First-tier S~~ubcontractor or supplier at any tier, the ~~ContractSubcontractor~~ shall not be liable for the repair of any defects of material or design furnished by JPL nor for the repair of any damage that result from any defect in JPL-furnished material or design.
- (j) This warranty shall not limit JPL's rights under the "Inspection of Construction" Article of this ~~ContractSubcontract~~ with respect to latent defects, gross mistakes, or fraud.
- (k) Defects in design or manufacture of equipment, specified by JPL on a "brand name and model" basis, shall not be included in this warranty. In this event, the ~~ContractSubcontractor~~ shall require any ~~First-tier S~~ubcontractors, manufacturers, or suppliers thereof to execute their warranties in writing directly to the Institute.

WITHHOLDING OF FUNDS

[T&MC – ~~40/0309/04~~]

(Work performed outside the United States is exempt from the requirements of this Article.)

The Institute shall, upon its own action or upon written request of the Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from the ~~ContractSubcontractor~~ under this ~~ContractSubcontract~~ or any other ~~contractSubcontract~~ with the same ~~ContractSubcontractor~~, or any other Federally assisted ~~contractSubcontract~~ subject to Davis-Bacon prevailing wage requirements, which is held by the same ~~ContractSubcontractor~~, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the ~~ContractSubcontractor~~ or any ~~First-tier S~~ubcontractor the full amount of wages required by the ~~ContractSubcontract~~. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the ~~ContractSubcontract~~, the Institute may, after written notice to the ~~ContractSubcontractor~~, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

WORKING HOURS AND SPECIAL WORK DAYS

[T&MC, FPC – ~~40/0309/04~~]

- (a) The ~~ContractSubcontract~~ price is based on working whatever schedule may be necessary to complete the work within the prescribed time.
- (b) No work shall be performed on Saturdays, Sundays, or holidays recognized by JPL without prior notification to and approval by JPL, which notification shall be not less than 48 hours.

**MINIMUM TIMEKEEPING REQUIREMENTS FOR
LABOR-HOUR TYPE PROCUREMENTS
TO BE PERFORMED AT OFF-LAB FACILITIES**

- A. For individuals operating as independent ~~contract~~Subcontractors with no employees and no plans to hire employees, and where the subject JPL ~~Contract~~Subcontract is the individual's only ~~contract~~Subcontract, the ~~Contract~~Subcontractor must maintain a weekly record of time expended in performance of the JPL ~~Contract~~Subcontract.
- B. For individuals with more than one ~~contract~~Subcontract, or ~~contract~~Subcontractors who have employees or who are contemplating hiring employees, the following payroll practices apply:
 - 1. Maintain records in compliance with 29 CFR 516.2(a), (b), and (c). (See page 2 of this form.)
 - 2. Maintain accountability for withholding and payment of all legally required payroll-related liabilities.
 - 3. Maintain an internal control system that protects the integrity of the payroll system.
 - 4. Maintain an accounting system that has the capability to segregate labor hours and resultant costs by ~~contract~~Subcontract and by job or work order when appropriate.
 - 5. In accordance with terms of the Article entitled "Timekeeping and Payments" (paragraph (g)) and the Article entitled "Audit and Examination of Records - Negotiation," JPL may make or cause to be made an audit of any or all of the above-described records.
- C. The above practices do not apply to consultants or second-tier independent ~~contract~~Subcontract labor services procured by ~~contract~~Subcontractors. Consultants and second-tier independent ~~contract~~Subcontractors are not considered to be employees of the ~~Contract~~Subcontractor. If the ~~Contract~~Subcontract authorizes such services, these charges must be clearly defined on invoices as consultant, First-tier Subcontractor, or other direct charges and not as employees. This distinction must be made on all other applicable ~~Contract~~Subcontract and ~~Contract~~Subcontract-related documents as well.
- D. By acceptance of this ~~Contract~~Subcontract, the ~~Contract~~Subcontractor certifies that its timekeeping practices meet JPL requirements.

29 CFR 516.2

Employees subject to minimum wage or minimum and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Fair Labor Standards Act, hereafter referred to as the Act.

- (a) Items Required. Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each and every employee to whom section 6 or both sections 6 and 7(a) of the Act apply:
- (1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records.
 - (2) Home address, including zip code.
 - (3) Date of birth, if under 19.
 - (4) Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss, or Ms.). (Employee's sex identification is related to the equal pay provisions of the Act ~~which that~~ are administered by the Equal Employment Opportunity Commission. Other equal pay recordkeeping requirements are contained in 29 CFR Part 1620.)
 - (5) Time of day and day of week on which the employee's workweek begins (or for employees employed under section 7(k) of the Act, the starting time and length of each employee's work period). If the employee is part of a work force or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice.
 - (6)
 - (i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act;
 - (ii) Explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis; and
 - (iii) The amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate" (these records may be in the form of vouchers or other payment data).
 - (7) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours, and a "workweek" is any fixed and regularly recurring period of seven consecutive workdays).
 - (8) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation.
 - (9) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under paragraph (a)(8) of this section.
 - (10) Total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions.
 - (11) Total wages paid each pay period.
 - (12) Date of payment and the pay period covered by payment.
- (b) Records of Retroactive Payment of Wages. Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division pursuant to section 16(c) and/or section 17 of the Act shall:
- (1) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.
 - (2) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour division, and:
 - (i) Preserve a copy as part of the records;
 - (ii) Deliver a copy to the employee; and
 - (iii) File the original, as evidence of payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.
- (c) Employees Working on Fixed Schedules. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by paragraph (a)(7) of this section, the schedule of daily and weekly hours the employee normally works. Also:
- (1) In weeks in which an employee adheres to this schedule, indicates by check mark, statement, or other method that such hours were in fact actually worked by him; and
 - (2) In weeks in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.



Jet Propulsion Laboratory
California Institute of Technology
4800 Oak Grove Drive
Pasadena, California 91109-8099
(818) 354-4321

RELEASE OF INFORMATION

This ~~Contract~~Subcontract with the Jet Propulsion Laboratory (JPL) constitutes a First-tier ~~S~~ubcontract under a prime contract between the California Institute of Technology and the National Aeronautics and Space Administration (NASA). It is NASA's policy to provide the widest practical dissemination of information on all of its activities. Since 90% of NASA's research and development effort is performed by private industry, ~~contract~~Subcontractors and ~~subcontractors~~ First-tier Subcontractors have played a large role in this process.

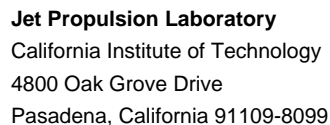
In accordance with this policy, the ~~Contract~~Subcontractor may want to issue press releases or plan publicity and advertising from time to time, and the ~~Contract~~Subcontractor will be expected to respond to queries from information media.

Close coordination in all of these matters is required, and JPL requires that all materials (e.g., news and photo releases, exhibit copy, motion picture scripts, and advertising copy) directly related to the ~~Contract~~Subcontractor's work with and for JPL be reviewed by JPL for technical accuracy prior to issuance or use.

To expedite this review, the ~~Contract~~Subcontractor shall send the materials to the JPL Media Relations Office, mail stop 186-120, stating the ~~Contract~~Subcontractor's deadlines, and referencing this ~~Contract~~Subcontract number.

In the event this ~~Contract~~Subcontract is a cost-reimbursement type ~~contract~~Subcontract, review by JPL shall not constitute approval for reimbursement of expenditures made in connection with publicity or advertising releases. Any such expenditures remain subject to applicable cost principles.

Nothing contained herein shall be deemed to change existing requirements relating to the release of classified information.



Before a JPL Affiliate Badge can be issued to an affiliate for access to JPL facilities, this form must be completed by the person requiring access and submitted to JPL Security and Protective Services (M/S 310-129).

To allow for security processing, this form must be submitted at least 24 hours before the required access to JPL premises by the affiliate.

1. Have you ever been convicted of a felony? Yes ☐ No ☐
2. Have you ever been convicted of a misdemeanor ~~which~~ that resulted in imprisonment? ☐ ☐
3. If you answered "Yes" to any of the above questions, please state the date, place, and circumstances. A conviction will not necessarily disqualify you from access to JPL premises. If you need additional space, please attach another sheet of paper.

[illegible]

I certify that answers given herein are true and complete to the best of my knowledge, and I authorize investigation of all statements contained herein. I understand that misrepresentation or omission of facts could result in withdrawal or denial of access to JPL.

Signature of Affiliate Requesting Access

Required Access Date

Printed Name of Affiliate Requesting Access

Printed Name of Affiliate Sponsor

NOTIFICATION TO PROSPECTIVE ~~CONTRACT~~SUBCONTRACTORS OF JPL'S ETHICS POLICIES AND ANTI-KICKBACK HOT LINE

JPL is committed to conducting its business in accordance with the highest standards of ethics and integrity. In this regard, we have an on-going orientation and training program to assure that every JPL employee is aware of this commitment and their individual responsibility for compliance. We must rely on the personal integrity of our employees and the integrity and cooperation of our suppliers and ~~contract~~Subcontractors to make sure that these high standards are maintained.

The policies that implement our standards of business conduct state clearly that no employee may solicit or accept any "kickback," gift, gratuity, entertainment, compensation, or favors of any kind from any supplier/~~contract~~Subcontractor or prospective supplier/~~contract~~Subcontractor to JPL. Our policies make it clear that these standards not only apply to procurement personnel but also to employees in all functions and at all levels.

The purpose of this letter is to make sure that you and your employees are aware of our policies, and that together we can achieve and maintain excellence in the conduct of our business relationships.

In the unlikely event that any JPL employee ever attempts to solicit a "kickback," please notify us immediately. JPL has established an Anti-Kickback Hot Line number, (818) 354-9999. Please feel free to call this number collect. The information you provide will be handled with confidentiality, investigated thoroughly, and appropriate action taken.

Thank you for your cooperation and support in this important matter.

Certifications

(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

I. CERTIFICATION OF NONSEGREGATED FACILITIES

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
- (b) By the submission of an offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the ~~contract~~Subcontract.
- (c) By submission of the offer, the offeror further agrees that (except where it has obtained identical certifications from proposed ~~subcontract~~Subcontractors for specific time periods) it will:
- (1) Obtain identical certifications from proposed ~~subcontract~~Subcontractors before the award of First-tier Ssubcontracts under which the First-tier Ssubcontractor will be subject to the Equal Opportunity clause;
 - (2) Retain such certifications in its files; and
 - (3) Forward this certification and the following notice to the proposed First-tier Ssubcontractors:

NOTICE TO PROSPECTIVE FIRST-TIER SSUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

A Certificate of Nonsegregated Facilities must be submitted before the award of a First-tier Ssubcontract under which the First-tier Ssubcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each First-tier Ssubcontractor for all First-tier Ssubcontracts during a period (i.e., quarterly, semi-annually, or annually).

- (d) By commencing performance of the ~~Contract~~Subcontract work, the selected ~~contract~~Subcontractor certifies to the Nonsegregated Facilities provisions above.

II. CERTIFICATION OF ANTI-KICKBACK COMPLIANCE

(A Certification of Anti-Kickback Compliance must be submitted prior to award.)

By submission of an offer, the offeror certifies that it has read the General Provision entitled "Anti-Kickback Procedures," contained in the solicitation and that neither it nor any of its employees has performed or participated in any prohibited actions, as defined in that provision, relating to the award of the ~~Contract~~Subcontract. By commencing performance of the ~~Contract~~Subcontract work, the selected ~~contract~~Subcontractor certifies to Anti-Kickback Compliance.

III. CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE

(The ~~Contract~~Subcontractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it complies with the Americans with Disabilities Act, 42 U.S.C., 12101 et. seq., and will maintain compliance throughout the life of this ~~Contract~~Subcontract. By commencing performance of the ~~Contract~~Subcontract work, the selected ~~contract~~Subcontractor certifies to the Americans with Disabilities Act compliance.

IV. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(The following certification applies to all offers and awards in excess of \$100,000.)

- (a) The definitions and prohibitions contained in the General Provision Article "Limitation on Payments to Influence Certain Federal Transactions" are hereby incorporated by reference in paragraph (b) of this Certification.
- (b) By submission of an offer, the offeror certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal ~~contract~~Subcontract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal ~~contract~~Subcontract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," to the JPL ~~Subcontract~~ ~~Manager~~Subcontracts Manager; and
 - (3) He or she will include the language of this Certification in all ~~First-tier S~~Subcontract awards at any tier and require that all recipients of ~~First-tier S~~Subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this ~~Contract~~Subcontract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to civil penalty of not less than \$20,000 and not more than \$100,000, for each such failure.

V. CERTIFICATION OF FULL DISCLOSURE BY THE ~~CONTRACT~~SUBCONTRACTOR/OFFEROR REGARDING WHETHER IT ANTICIPATES BEING OR IS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE U.S. FEDERAL GOVERNMENT AT TIME OF AWARD

(This certification applies to ~~contract~~Subcontracts with a ~~contract~~Subcontract value exceeding \$25,000.)

- (a) By submission of an offer, the offeror certifies that it has provided full disclosure in writing to JPL whether as of the anticipated time of award of any ~~contract~~Subcontract resulting from the solicitation, it anticipates that it or its principals will be debarred, suspended, or proposed for debarment by the U.S. Federal Government.
- (b) By commencing performance of the ~~Contract~~Subcontract work, the selected ~~contract~~Subcontractor certifies that it has made full disclosure to JPL in writing as to whether as of the time of award it or any of its principals is debarred, suspended, or proposed for debarment by the U. S. Federal Government. (See FAR 9.404 for information on the List of Parties Excluded from Procurement Programs).

VI. CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

(This certification is required prior to award of a Subcontract with an estimated value, including any options, over \$100,000.)

- (a) Submission of this certification is a prerequisite for making or entering into this ~~Contract~~Subcontract imposed by Executive Order 12969, August 8, 1995.
- (b) By submission of an offer, the offeror certifies that it has accepted and certifies to all the Terms and Conditions found in the Federal Acquisition Regulation (FAR) at 52.223-13.

VII. CERTIFICATION REGARDING ~~CONTRACT~~SUBCONTRACTOR REPRESENTATION BY FORMER CALTECH/JPL EMPLOYEES

(The ~~Contract~~Subcontractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it has no previous JPL or Caltech employee involved in this procurement who has been gone from JPL for less than one year, who participated personally and substantially in the subject matter while working for JPL or Caltech, who was officially responsible for the subject matter while working for JPL or Caltech, and who owns or represents the proposer's organization.



ASBESTOS NOTIFICATION

The Jet Propulsion Laboratory is committed to providing a safe and healthy work environment for all personnel.

In the past several years, the Laboratory management, working through the JPL Safety Operations Section - Industrial Hygiene and Workers Compensation Group (SOS - IHWC) and the Facilities Division, has had an on-going program of asbestos identification and control. This program has included bulk sampling, air monitoring, and training for members of the Facilities and Maintenance staff.

Through this program, some of the buildings at JPL have been identified to contain friable sprayed-on fireproofing above the ceilings. At the Oak Grove site, these buildings include 167, 168, 169, 179, 180, 183, 186, 230, 238, 264 and 291, and at the Foothill site, buildings 502, 506 and 507. Asbestos may be present in other JPL buildings in other various forms, including, but not limited to: transite, thermal system insulation, roofing products, ceiling tiles, spray-applied acoustical ceiling, wall materials, and floor tiles/linoleum/mastic.

The majority of asbestos at JPL is located in restricted access areas, such as mechanical rooms, boiler rooms, and attics. It is in generally good condition and does not pose a hazard during normal operations.

The SOS-IHAWC staff has taken numerous air samples in JPL buildings. Sampling results indicate that airborne asbestos levels in the buildings are well below regulatory limits and are lower than those found in industrial workplaces where adverse health effects have been observed. Fiber levels in JPL buildings are not significantly different than fiber levels found outside.

Asbestos-containing materials do not pose a health hazard, unless the fibers become airborne. ~~Contract~~Subcontractor or maintenance/construction/renovation activity involving intentional or accidental contact with friable materials can release fibers; therefore, only authorized and properly trained personnel are permitted to perform work that may disturb asbestos materials.

General written procedures and handling restrictions have been provided to JPL and ~~contract~~Subcontractor personnel. SOS-IHAWC must be given notification and, if deemed necessary, a written description of any asbestos-related work to be conducted in areas where asbestos may be present prior to the initiation of activities. The work to be performed will determine if these areas must be tested and cleared. SOS-IHAWC will review sampling results and documentation after completion of ~~contract~~Subcontractor activities prior to occupancy.

Pursuant to the California Health and Safety Code (Chapter 10.4, Section 25915), each employee has the right to review all reports about surveys, bulk sampling and air sampling. These reports are available for review during normal business hours. Contact SOS-IHAWC at extension 4-1771 to review these documents or if there are any questions.